

Zoning Hearing Board Application

Abington Township, PA

1176 Old York Road, Abington PA 19001, Fax: 215-884-8271, Telephone: 267-536-1000



This application must be accompanied by a minimum of ten (10) copies of the plot plan of the property, prepared and signed by a registered land surveyor or professional engineer. The plan must include lot area, lot dimensions, coverage percentages, existing structures, other improvements, proposed improvements, off-street parking, buffers and all characteristics on the site.

The Undersigned herein makes application for:

- Request for Variance from the Zoning Ordinance.
- Request for a Special Exception as provided by the Zoning Ordinance.
- Appeal from the actions of the Zoning Officer.

1. Name and address of the owner of the land: Phone number:
Baederwood Residential Partners, LP
1301 Lancaster Avenue
Berwyn, PA

2. Name and address of the applicant: Phone number:
Same

3. Name and address of the attorney: Phone number:
Marc B. Kaplin, Esquire (610) 941-2666
910 Harvest Drive
Blue Bell, PA 19422

4. If the applicant is not the owner of the property, list the applicant's interest in filing this application.
Example: equitable owner, agent, lessee, etc.

5. Description of the property:

Address/location rear 8.32 acres of overall 18.88 acre tract of land adjacent to Fairway Valley Road on which Baederwood Shopping Center is located

Present use undeveloped

Proposed improvement 244 unit apartment building

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6. State briefly the reasons for which the proposed improvements or use does not meet the requirements of the Zoning Ordinance, and the nature of relief you are seeking:

SEE ATTACHED

7. List the specific section of the Zoning Ordinance upon which the application for a variance or special exception is based:

SEE ATTACHED

8. Describe in detail the grounds for the appeal, or the reasons both in law and in fact for the granting of the variance or special exception, describing in detail the nature of the unique circumstances, and the specific hardship justifying your request for approval of the application.

SEE ATTACHED

9. List any and all prior Zoning Hearing Board action regarding the property. List the date, case number and the nature of the zoning relief granted.

SEE ATTACHED

10. List any and all additional information, records, transcripts which may be helpful to the Zoning Hearing Board in rendering a decision: A minimum of eight (8) copies are required to be submitted.

Marc B. Kaplin, Esquire, Attorney for:

A handwritten signature in black ink, appearing to read "Marc Kaplin".

Signature of Owner - Baederwood Residential Partners, LP

Signature of Applicant

Internal Validation:

Date Received:

Fee Paid:

Case:

Signature of the Zoning Officer

**BEFORE THE ZONING HEARING BOARD OF
ABINGTON TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA**

**APPEAL OF ZONING DETERMINATION ISSUED JULY 18, 2016
REGARDING CONDITIONAL USE APPLICATION FILED BY
BAEDERWOOD RESIDENTIAL PARTNERS, L.P.**

Pursuant to Section 909.1(a)(3) of the Municipalities Planning Code, 53 P.S. § 10909.1 (a)(3), Baederwood Residential Partners, L.P. (“**BRP**”) hereby appeals to the Zoning Hearing Board of Abington Township (“**Board**”) from the Abington Township Planning and Zoning Officer’s zoning determination dated July 18, 2016 (“**Zoning Determination**”) issued in connection with the Baederwood Shopping Center Tract, and in support thereof avers as follows:

1. BRP is the owner of 8.423 acres of the overall 18.88 acre tract of land located adjacent to Fairway Valley Road in Abington Township (“**Tract**”) on which the Baederwood Shopping Center (“**Shopping Center**”) is located.

2. The two parcels that comprise the Shopping Center are owned by BSC Jenkintown Limited Partnership (“**BSC**”) and are located on approximately 10.56 acres of the Tract fronting on Fairway Valley Road (“**Shopping Center Parcels**”).

3. The rear 8.423 acres of the Tract owned by BRP are undeveloped (“**Rear Parcel**”).

4. The entire Tract is located in the Fairway Transit Zoning District (“**FTD District**”).

5. The FTD District was adopted by the Board of Commissioners on January 6, 2011, pursuant to Ordinance No. 2000 (“**FTD Ordinance**”) as an amendment to the Zoning Ordinance. A copy of the FTD Ordinance is attached hereto as **Exhibit “A”**.

6. On January 6, 2011, the Board of Commissioners also adopted Ordinance No. 2006 which rezoned the Shopping Center Parcels and the Rear Parcel to the FTD District. A copy of Ordinance 2006 is attached hereto as **Exhibit “B”**.

7. The FTD Ordinance was adopted in response to a Challenge to the substantive validity of the zoning of the Rear Parcel filed by Baederwood Limited Partnership (“**BLP**”), the then owner of both the Rear Parcel and the Shopping Center Parcels, on January 27, 2009, in which BLP contended that the existing R-1 zoning of the Rear Parcel was illegal spot zoning and was otherwise arbitrary and irrational (“**Challenge**”).

8. Following BLP’s filing of the Challenge, representatives of the Township met on several occasions with BLP representatives to discuss the amicable resolution of the Challenge, during which time the Challenge was put on hold.

9. The FTD Ordinance was a collaborative effort between the Township and BLP to create a new zoning district which would allow for the development of the Rear Parcel with multi-family dwellings and would allow for the revitalization of the Shopping Center on the Shopping Center Parcels.

10. Pursuant to Section 504.3.D of the FTD Ordinance, a “transit oriented development” (“**TOD**”) is a use permitted by conditional use on sites larger than one (1) acre.

11. Section 504.3.D of the FTD Ordinance defines a TOD as follows:

Use C-34: Transit-Oriented Development (TOD): A building or buildings may be comprised of any mixture of office, commercial, residential, and community uses as defined herein. All buildings and all office, commercial, residential, and community service uses in a TOD shall comply with the design and dimensional standards as specified in the district regulations where the development is to be located. Design and dimensional standards provided in Section 706 for a particular use permitted within Use C-34 shall not apply.

12. Section 706.C of the FTD Ordinance requires that the development contain a mixture of office, commercial, residential and community uses and Section 504.4.B requires a minimum of 20% residential floor area.

13. At the time the FTD Ordinance was adopted, the existing development on the Shopping Center Parcels did not contain any residential use or residential floor area and therefore became a legal non-conforming use.

14. The FTD Ordinance also created the following legal dimensional nonconformities with regard to the Shopping Center Parcels:

a. Section 504.5 contains building setback requirements from the following locations that are not met:

- i. From curb line
- ii. From public ROW
- iii. From service alleys
- iv. From side and rear property lines
- v. From off-street parking areas
- vi. Between adjacent buildings

b. Section 504.6.D and E require crosswalks from building to building and to all street connections and adjoining properties. Such sidewalks do not exist.

c. Section 504.6.F requires bicycle racks at a rate of one 10 bicycle rack for every 250 surface parking stalls and no such bicycle racks exist.

d. Section 504.6.G requires that adjacent residential uses be screened from development in the FTD District. The required screening from adjacent residential uses is not provided.

e. Section 504.6.H limits the number of curb cuts to two and there are four existing curb cuts adjacent to the Fairway.

- f. Section 504.6.K requires all loading and service areas to be screened from view from all streets and adjacent properties and no such screening exists.
- g. Section 504.6.L requires a minimum of 5% of gross floor area to be dedicated as public open space. There is only one small patio area that functions as open space and is not dedicated to the Township.
- h. Section 504.6.M requires ½ % of parking to be dedicated to car share facilities and there are no such car share facilities.
- i. Section 504.8.A.2(b) requires that side and rear facades have architectural treatments that are complimentary to the primary façade and existing side and rear facades have no such architectural treatments.
- j. Section 504.8.B.2(a) requires that surface parking lots be located to the rear or side of principal buildings and prohibits surface parking areas between the primary façade and the street. Existing surface parking areas are located between the primary façade and the street.
- k. Section 504.8.B.2(b) requires that parking lots that have frontage on a public street have a 5-foot wide landscaped area with a 3-foot high wall or hedge to provide a screen. No such landscaping or screening exists.
- l. Section 504.8.B.2(d) requires that at least 10% of all surface parking areas be landscaped with a design that will allow at least 20% of all paved areas to be shaded within five years and no such landscaping is present.
- m. Section 504.8.C.1 and 2 require sidewalks of a design width to permit walking, bicycling and the like, and no such sidewalks are provided.
- n. Section 504.8.C.2(f) requires sidewalks along onsite access drives. No such sidewalks are provided.

- o. Section 504.8.C.2(g), (h), (i), (j) and (k) design standards are not met.

Specifically:

- i. Traffic calming devices are required along main access driveways and no such traffic calming devices are in place.
- ii. Street furniture including benches and trash and recycling receptacles are required every 100 feet, bicycle racks are required every 300 feet and planters are required every 50 feet. The required street furniture at the required spacing is not provided.
- iii. Street trees are required along all streets and main access driveways every 40 feet. No such street trees are provided.
- iv. Driveways are required to be separated from sidewalks by a 4-foot wide landscaped strip or decorative verge area, and no such landscaped strips or verge areas are provided.
- v. 8 foot wide sidewalks are required along streets and main access driveways, 6 foot wide sidewalks are required along secondary driveways, and 4 foot wide sidewalks are required along alleys. The required sidewalks at the required widths are not provided.
- vi. Section 504.8.E.2(e) requires that parking lot light standards not exceed 18 feet in height and pedestrian lights not exceed 14 feet in height. Existing parking lot light standards and pedestrian lights exceed the maximum heights permitted.
- vii. Section 504.8.G.2(d) requires that 30% of hardscaped areas be shaded using trees or shade structures. The required shaded areas are not provided.
- viii. Section 504.8.G.2(e) requires that there be a focal feature such as a water fountain or sculpture in open space areas. The required focal feature is not provided.

ix. Section 504.8.G.3(c) requires that a visual screen with a minimum width of half of the required setback be provided where the site abuts another zoning district. The required visual screen is not provided where the site abuts other zoning districts.

x. Section 504.8.G.3(d) requires a 6 foot high opaque screen around trash and mechanical service areas. The required opaque screen are not provided.

15. By letter dated June 15, 2016, BRP registered the existing legal nonconformities existing on the Tract. A copy of that letter is attached hereto as **Exhibit “C”**.

16. On July 5, 2013, BLP recorded a Declaration of Easements encumbering both the Rear Parcel and the Shopping Center Parcels. (**“Declaration”**). A copy of the recorded Declaration is attached hereto as **Exhibit “D”**.

17. The recorded Declaration stated that BRP intended to develop the Rear Parcel as a multifamily residential project and granted BRP the right to construct a pathway connecting the Rear Parcel to Fairway Valley Road over the Shopping Center Parcels in the manner depicted on an Easement Plan attached to the Declaration, provided that BRP did not interfere with the conduct or operation of any business on the Shopping Center Parcels.

18. The Easement Plan attached to the Declaration depicted the proposed driveway connection over the Shopping Center Parcels in a manner that maintained the existing nonconformities located on the Shopping Center Parcels.

19. On June 25, 2013, the Township Solicitor approved the Declaration and executed it on behalf of the Township.

20. Following the recoding of the Declaration, BLP conveyed the Rear Parcel to BRP and conveyed the Shopping Center Parcels to BSC.

21. On or about February 4, 2016, BRP filed a Conditional Use Application for the development of a 244 unit apartment building (Use H-1) on the Rear Parcel (“**Apartment Use**”) as part of an overall TOD located on the Tract (“**Application**”). A copy of the Application is attached hereto as **Exhibit “E”** and the Conditional Use Plan that accompanied the Application is attached hereto as **Exhibit “F”**.

22. The development of the Apartment Use on the Rear Parcel will bring the existing development on the Shopping Center Parcels into compliance with the use requirements of the FTD District regulations and will eliminate the existing legal nonconforming use.

23. The development of the Apartment Use on the Rear Parcel conforms to all dimensional requirements of the FTD Ordinance.

24. The development of the Apartment Use on the Rear Parcel does not increase the extent of any of the dimensional legal nonconformities existing on the Shopping Center Parcels.

25. The development of the Apartment Use on the Rear Parcel does not affect any of the existing buildings, parking or loading areas on the Shopping Center Parcels, with the exception of relocation of a small number of parking spaces in connection with the construction of an access driveway as depicted on the recorded Declaration.

26. By letter dated July 18, 2016, Mark Penecale, the Township Planning and Zoning Officer (“**Penecale**”) issued a review of the Application in which he concluded that in order to develop the Rear Parcel, BRP would need to obtain variances from the Board to maintain the existing legal nonconformities on the Shopping Center Parcels (“**Penecale Determination**”). A copy of the Penecale Determination is attached hereto as **Exhibit “G”**. Specifically, the Penecale Determination requires that:

- a. Crosswalks must be installed between all existing buildings located on the Shopping Center Parcels;
- b. Bicycle racks must be added throughout the Shopping Center Parcels;
- c. Landscaping must be installed on the Shopping Center Parcels along the Fairway to screen Rydal East and Rydal West (across the Fairway);
- d. Three of the four existing curb cuts on the Shopping Center Parcels be eliminated;
- e. Existing loading and service areas on the Shopping Center Parcels must be screened from view from all streets and adjacent properties;
- f. Existing parking areas on the Shopping Center Parcels must be landscaped;
- g. Sidewalks must be added on the Shopping Center Parcels along all access drives;
- h. Sidewalks, landscaping, benches, trash cans, planters and bicycle racks must be added on the Shopping Center Parcels along the Fairway;
- i. Additional public opens spaces must be added on the Shopping Center Parcels;
- j. New light standards must be added throughout the parking areas on the Shopping Center Parcels.

27. Penecale’s Determination is erroneous as a matter of law in that it conflicts with both the Zoning Ordinance’s general provisions regarding non-conforming uses and buildings, specific regulations governing the FTD District, and established Pennsylvania law regarding landowners’ rights to maintain non-conforming uses and buildings.

Penecale’s Decision Conflicts With the General Non-Conforming Use Provisions of the Zoning Ordinance

28. The Zoning Ordinance defines “non-conforming” as:

A building, lot, structure, sign or use, which lawfully existed prior to the adoption, revision or amendment of this Ordinance, but does not comply with the zoning use or district regulations by reason of adoption, revision or amendment of this Ordinance. Treatment of non-conforming buildings, lots, and uses is specifically addressed within this ordinance.

29. Section 1110 of the Zoning Ordinance contains specific provisions for the treatment of nonconforming uses, structures, lots and signs.

30. Section 1110.D. provides that:

The lawful use of a lot, structure, or use existing on the adoption date of this Ordinance or any amendment thereto, or authorized by a building permit issued prior thereto, may be continued; although such use does not conform to the provisions of this Ordinance.

31. Section 1110.J of the Zoning Ordinance allows for expansion of a nonconforming use, provided that:

a. The proposed expansion shall take place only on the lot containing the nonconformity ***or upon lots bordering the lot containing the nonconformity***, provided all such lots were held in single and separate ownership at the time the use became nonconforming.

b. ***The proposed expansion shall conform with the dimensional requirements of the use to be expanded or the requirements of the district in which the said expansion is located***, whichever is the more restrictive, as contained in this Ordinance. Such requirements shall include but not be limited to those pertaining to area, building height, parking, sign, yard and buffer yard.(emphasis supplied)

32. Section 1110.F allows a parcel on which nonconforming uses or structures is located to be transferred to a new owner, and provides that:

F. Transfer of Ownership: Whenever a nonconforming use, structure, lot (except residential or agricultural) or sign is transferred or sold to a new owner, such previous nonconformity may be continued by the new owner provided a new occupancy permit shall be applied for and issued. Should the landowner propose any changes or alterations of the nonconformity, the municipality may impose conditions regarding layout, circulation, and performance which it deems necessary to insure that the change or alteration is in the best interest of the municipality.

The landowner may appeal such conditions, subject to the provisions of this Ordinance.

33. The Shopping Center Parcels and the Rear Parcel were held in single and separate ownership on the date the FTD Ordinance was adopted.

34. Following the enactment of the FTD Ordinance, the Shopping Center Parcels were conveyed to BSC.

35. Pursuant to Section 1110.J, BRP is entitled to expand the nonconforming use of the Tract by construction the Proposed Apartments, provided that the Proposed Apartments conform with the dimensional requirements of the FTD District.

36. Pursuant to Section 1110.F, BSC is entitled to maintain the existing legal nonconformities on the Shopping Center Parcels.

37. Therefore, based on the clear language of the Zoning Ordinance, Penecale's Decision requiring that the existing legal nonconformities on the Shopping Center Parcels be eliminated in order for BRP to construct the Proposed Apartment Use on the Rear Parcel is contrary to the nonconforming use provisions of Section 1110 of the Zoning Ordinance.

Penecale's Decision Conflicts With the Specific Non-Conforming Use Provisions of the FTD District Regulations

38. The FTD Ordinance, as enacted, contained specific language negotiated between the Township and BRP regarding the existing nonconformities and their maintenance and/or expansion. Specifically:

a. Section 504.2 of the FTD Ordinance contains the following specific definition for a "nonconforming site":

Nonconforming site. As of the effective date of the Fairway Transit District, a site whose uses, structures, mix, dimensional, special development, and design standards do not conform to the use, mix, dimensional, special development, and design standards of the FTD.

Buildings within a nonconforming site may be expanded by up to 15% of the total existing gross floor area of all buildings provided that the expansion complies with the use, setback, coverage, and other dimensional requirements of the FTD. *Any expansion beyond 15% must comply with all requirements and standards of the FTD.* (emphasis supplied)

b. Section 504.6.B and C. of the FTD Ordinance contain the following special development regulation which provides that:

B. Existing nonconforming lots, uses, structures and sites must be registered with the Township. *Any development beyond the permitted expansion of lawful nonconforming lots, uses, structures, and sites shall comply with the requirements and standards of the FTD.* Buildings within a nonconforming site may be expanded by up to 15% of the total existing gross floor area of all buildings provided that the expansion complies with the use, setback, coverage, and other dimensional requirements of the FTD. *Any expansion beyond 15% must comply with all requirements and standards of the FTD.* (emphasis supplied)

C. *Any development beyond the permitted expansion of lawful nonconforming uses, lands, and structures shall comply with the requirements and standards of the FTD.* (emphasis supplied)

c. Section 504.6.O of the FTD Ordinance specifically requires that: “the form and design of *all new development* permitted in the FTD, including but not limited to buildings, structures, parking areas, and public open spaces and plazas, shall comply with the standards of Section 504.8[Design Standards].”

39. Therefore, multiple provisions of the FTD District make it clear that only new development (above and beyond the permitted 15% expansion) need comply with the dimensional regulations of the FTD District and that all existing nonconformities are permitted to remain.

40. Penecale’s Decision requiring that the existing legal nonconformities on the Shopping Center Parcels be eliminated in order for BRP to construct the Proposed Apartment Use on the Rear Parcel is contrary to the express provisions of the FTD Ordinance.

Penecale's Decision Conflicts With Established Pennsylvania Law

41. In Pennsylvania, the protections afforded to preexisting nonconforming uses and structures are of constitutional dimension. *Nettleton v. Zoning Board of Adjustment of City of Pittsburgh*, 574 Pa. 45 (828 A.2d 1033 (2003)).

42. The fundamental basis for the protection of uses and structures lawful when instituted is the “inherent and infeasible” right of citizens to “possess and protect property” guaranteed by Article I, Section 1 of the Pennsylvania Constitution. *Northwestern Distributors, Inc. v. Zoning Hearing Board of Moon Township*, 526 Pa. 186, 584 A.2d 1372 (1991).

43. Lawful nonconforming use establishes vested property right in property owners which cannot be abrogated or destroyed, unless the use is a nuisance, abandoned, or is extinguished by eminent domain. *Northwestern Distributors, Inc. v. Zoning Hearing Board of Moon Township*, 526 Pa. 186, 584 A.2d 1372 (1991).

44. Any requirement that a property owner discontinue a lawful preexisting nonconforming use, or bring it into compliance with current zoning requirements is *per se* confiscatory and violative of the Pennsylvania Constitution as a taking of property without just compensation. *Northwestern Distributors, Inc. v. Zoning Hearing Board of Moon Township*, 526 Pa. 186, 584 A.2d 1372 (1991).

45. Furthermore, a nonconforming use cannot be limited by a zoning ordinance to the precise magnitude thereof which existed at the date of the ordinance; it may be increased in extent by natural expansion and growth of trade. *Humphreys v. Stuart Realty*, 364 Pa. 616, 73 A.2d 407; 409 (1950).

46. Penecale's Determination prevents BRP from expanding the TOD onto the Rear Parcel unless BSC discontinue its lawful preexisting nonconforming use of the Shopping Center Parcels and brings them into compliance with current zoning requirements.

47. Penecale's Determination violates BRP and BSC's "inherent and infeasible" rights to "possess and protect property" guaranteed by Article I, Section 1 of the Pennsylvania Constitution and is per se confiscatory.

48. Based upon the foregoing, BRP requests that this Board reverse Penecale's Determination and find that BRP is permitted to develop the Rear Parcel in conformity with the FTD Ordinance without bringing the Shopping Center Parcels into compliance with the FTD Ordinance.

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc Kaplin
Marc B. Kaplin, Esquire
Attorneys for Appellant,
Baederwood Residential Partners, L.P.

TOWNSHIP OF ABINGTON
MONTGOMERY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2000

AN ORDINANCE OF THE TOWNSHIP OF ABINGTON, MONTGOMERY COUNTY, PENNSYLVANIA AMENDING THE ABINGTON TOWNSHIP ZONING ORDINANCE AND ZONING MAP, PURSUANT TO ARTICLE 6 OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE BY ADDING A NEW SECTION 504 CREATING A FAIRWAY TRANSIT DISTRICT (FTD) AND TO ESTABLISH SPECIFIC STANDARDS AND REQUIREMENTS APPLICABLE TO SUCH DISTRICT; CREATING NEW USE C-34 TRANSIT-ORIENTED DEVELOPMENT (TOD), USE C-35 CAR SHARE FACILITY, AND USE J-4 TRANSIT STATION; AND AMENDING ARTICLE X SIGN REGULATIONS.

The Board of Commissioners of the Township of Abington, Montgomery County, Pennsylvania hereby ENACTS and ORDAINS the following amendments to the Abington Township Zoning Ordinance:

Section 1. Authority. This Ordinance is established pursuant to authority contained in Article 6 of the Pennsylvania Municipalities Planning Code and Article XIII of the Abington Township Zoning Ordinance.

Section 2. The Abington Township Zoning Ordinance, Article VII Use Regulations, is hereby amended by creating Use C-34 and Use C-35 under Section 706.C Commercial Uses and Use J-4 Transit Station under Section 706.I Utility Uses. Section 703.D is amended to allow more than one principal use per building or lot for new Use C-34:

Section 703.D. Except for the Mixed Use District, Use C-15 Mixed Use Building, and Use C-34 Transit-Oriented Development, a building, structure, lot, or premises shall be permitted only one principal use.

Section 706.C. Commercial Uses:

34. Use C-34: Transit-Oriented Development (TOD): A building or buildings may be comprised of any mixture of office, commercial, residential, and community uses as defined herein. All buildings and all office, commercial, residential, and community service uses in a TOD shall comply with the design and dimensional standards as specified in the district regulations where the development is to be located. Design and dimensional standards provided in Section 706 for a particular use permitted within Use C-34 shall not apply.

a. Use C-34 office uses shall include the following:

Use F-1: Office Building
Use F-3: Medical Office
Use F-5 Professional Services

Section 706.c continued

b. Use C-34 commercial uses shall include the following:

- Use C-3: Bank
- Use C-6: Club
- Use C-7: Commercial School
- Use C-8: Convenience Store
- Use C-10: Dry Cleaners (Drop-Off)
- Use C-13: Hotel/Motel/Inn
- Use C-15: Mixed Use Building
- Use C-16: Parking Garage
- Use C-17: Parking Lot
- Use C-18: Personal Care Business
- Use C-19: Professional Service Business
- Use C-22: Repair Shop
- Use C-23: Restaurant
- Use C-24: Retail Take Out Foods
- Use C-25: Retail Shop
- Use C-26: Retail Store
- Use C-27: Supermarket
- Use C-32: Tavern/Bar
- Use C-35: Car Share Facility

c. Use C-34 residential uses shall include the following:

- Use H-1: Apartment Building/Multiplex Unit

d. Use C-34 community uses shall include the following:

- Use E-2: Community Center
- Use E-3: Adult/Child Day Care
- Use E-6: Library or Museum
- Use E-8: Municipal Complex
- Use E-11: School (Public/Private)
- Use G-3: Athletic/Health Club
- Use G-5: Movie Theater
- Use G-8: Theater (Performing)
- Use J-4: Transit Station

35. Use C-35: Car Share Facility: An on- or off-street parking space where car share members can pick-up or drop-off a vehicle for rental periods as short as one hour. Customers of a car share facility (as distinguished from Use 21, vehicle rental agency) sign up for annual memberships and pay hourly or daily usage rates for vehicles that are reserved online at a specific self-service location for a set length of time. Vehicles are parked in convenient locations throughout the region, with the goal that residents are within a five to ten minute walk of a self-service car.

Section 706.I. Utility Uses:

4. Use J-4: Transit Station: Any structure or facility located at selected points along transit routes used for the purpose of loading, unloading, or transferring passengers or accommodating the movement of passengers from one mode of transportation to another.

Section 3. The Abington Township Zoning Ordinance, Article V Special Zoning Districts, is hereby amended by adding Section 504, creating a new zoning district to be known as the "Fairway Transit District" as follows

SECTION 504. FAIRWAY TRANSIT DISTRICT (FTD)

Section 504.1 Purpose: The purpose of the Fairway Transit District is to implement recommendations of Abington Township's Comprehensive Plan. Specifically, the purpose of the FTD is to:

- A. Revitalize vacant and underutilized sites.
- B. Capitalize on the area's proximity to SEPTA's regional rail system
- C. Establish a town center or main street environment in the southern part of the township with a mix of uses and building types
- D. Create a vibrant streetscape along the Fairway and adjacent areas with sidewalks, outdoor cafes, landscape amenities, and public plazas and open space
- E. Improve circulation for pedestrians, cyclists, and transit-users.
- F. Enhance access to/from the Noble and Rydal train stations
- G. Provide more diverse housing opportunities
- H. Encourage quality design and innovative development
- I. Permit and integrate land uses in close proximity to each other in order to concentrate higher density residential uses along transit routes and provide for the daily recreational and shopping needs of the residents.

Section 504.2 Definitions:

Decorative verge areas. A narrow strip adjacent to the curbs of public or private streets or main access driveways that may be planted or paved with decorative patterns of brick, concrete, or other high quality, durable materials.

Hardscape. The manmade part of a development site or building's grounds consisting of hard materials, including, but not limited to paved areas, patios, retaining walls, walkways, sculpture, and fountains.

Landscape amenities. Features that provide comfort, convenience, pleasure or value to landscaped or hardscaped areas of a lot, such as benches, sculpture, lighting, water features, etc.

Landscaped plaza. A public open space at ground level, usually surrounded by buildings and streets and used for passive recreational activities and relaxation. Plazas are paved areas typically provided with amenities, such as seating, drinking and ornamental fountains, art, trees, and landscaping, for use by pedestrians.

Section 504.2 continued

Main access driveway. The primary function of the main access driveway is to provide access to a development site from a public or private street to a secondary access driveway or development sites on adjacent parcels.

Mature trees. A deciduous or evergreen tree that has a 4" dbh (diameter breast height) or is 45' in height.

Nonconforming site. As of the effective date of the Fairway Transit District, a site whose uses, structures, mix, dimensional, special development, and design standards do not conform to the use, mix, dimensional, special development, and design standards of the FTD. Buildings within a nonconforming site may be expanded by up to 15% of the total existing gross floor area of all buildings provided that the expansion complies with the use, setback, coverage, and other dimensional requirements of the FTD. Any expansion beyond 15% must comply with all requirements and standards of the FTD.

Pedestrian link. Any sidewalk, path, walkway, or paved area that connects buildings, streets, transit stations, commercial establishments, and other destinations for pedestrians.

Residential amenities. Features that provide comfort, convenience, pleasure or value to residential properties and their occupants, such as community centers, gyms, game rooms, etc.

Public open space. An area or areas set aside for the use and enjoyment of the general public. Public open space areas shall consist of plazas, parks, central greens, and similar types of usable, public space and shall meet the standards of Section 504.8.D.

Secondary access driveway. The primary function of a secondary access driveway is to provide access from the main access driveway to parking areas.

Shared parking. The provision that two or more uses on the same or separate properties that are in close proximity may share parking facilities to fulfill individual parking requirements because their prime operational hours do not overlap.

Streetscape. The space between the buildings on either side of a street that defines its character. The elements of a streetscape include building frontage/façade, landscaping and street trees, sidewalks and paving, street furniture (benches, kiosks, trash receptacles, and newspaper boxes), signs, and lighting.

Street wall. The line of building façades, landscape walls, and/or hedges that define a pedestrian environment along a street.

Section 504.3 Use Regulations: A building or buildings may be erected, altered or used, and a lot may be occupied or used, in whole or in part, for any one or more of the following uses. Buildings may be either detached or attached.

A. Uses By Right: For sites one acre or less in size, the following uses as defined in Article VII, Section 706 are permitted by right. Single use buildings are permitted on sites one acre or less in size. All uses must comply with the design and dimensional standards of Sections 504.5, 504.6 and 504.8.

1. Use C-34: Transit-Oriented Development

B. Accessory Uses By Right: For all sites, the following accessory uses are permitted by right.

Section 504.3.B continued

1. Accessory uses, as defined in Article VII Use Regulations, Section 702.C.
 2. Use A-6 : Fences and Walls
 3. Use A-7: Home Occupation
 4. Use A-9: Swimming Pool
 5. Use A-10: Tennis/Sport Courts
 6. Use A-12: Play Structures
- C. **Conditional Use Approval:** Conditional use approval requires evidence of conformance with the express standards set forth in the FTD. The applicant is not required to demonstrate conformance with non-zoning ordinances or regulations at the conditional use hearing(s); however, this does not waive the need for subdivision and land development approval. Conditional use approval shall be subject to conditions based on the evidence presented at the hearing, or such conditions accepted by the applicant.
- D. **Conditional Uses:** The following uses are permitted by conditional use, subject to the design and dimensional standards of the FTD.
1. Use C-34 Transit-Oriented Development for sites greater than one acre in size
 2. Use C-9 Drive-In Facility for Use C-3 or Use C-26
- E. **Prohibited Uses:** The following uses are prohibited.
1. Use A-8: Storage (Outdoor)
 2. Use C-9 Drive-in Facility for Use C-23 and Use C-24
 3. Use C-1: Automotive Sales
 4. Use C-2: Automotive Service
 5. Use C-5: Car Wash
 6. Use C-21: Rental Agencies (Vehicles)
 7. Use C-28: Service Station
 8. Use C-30: Shopping Mall
 9. Use C-31: Storage Facility (Self-Service)
 10. Sexually Oriented Business as defined by Ordinance No. 1870

Section 504.4 Mix Requirements: Development shall meet the following mix of use requirements based on the size of the site.

- A. For sites one acre or less in size, no mix of uses is required.
- B. For sites greater than one acre in size, the following mix requirements shall apply. The mix requirements do not mandate multiple use buildings.

Land Use	Minimum Percent of Total Floor Area (gross)*	Maximum Percent of Total Floor Area (gross)*
Nonresidential	20%	80%
Residential	20%	80%

*Exclusive of structured parking.

Section 504.5 Dimensional Regulations: The following dimensional regulations are the district standards which must be achieved for any use, addition or alteration:

- A. Minimum Lot Area: One acre
- B. Lot Frontage: Each development site shall have a minimum of 100 feet of frontage on a public or private street.
- C. Building Setbacks: Where public open space is proposed between the building and a public/private street or main access driveway, the minimum and maximum setbacks below shall not apply; however, the public open space standards of Section 504.8.D must be met.

Building Setbacks	Minimum	Maximum
From the curb line of public and private streets or main access driveways	20' primary streets 16' other streets/driveways	25' primary streets 20' other streets/driveways
From the curb line of side streets or secondary access driveways	10'	12'
From public rights-of-way	0'	see above
From service alleys	8'	--
From side or rear property lines	10'*	--
From side or rear property lines abutting a use as defined in Section 706.H. Residential Uses	25'*	--
From off-street parking areas	10'	--
Between adjacent buildings on same site	25'	--

* Where the proposed building height is increased in accordance with Section 504.7, one additional foot of setback for each side and rear yard shall be provided for each one foot of height above 55 feet.

D. Building Height:

Lot Area	Minimum Building Height	Maximum Building Height
One acre or less	20'	55'
Greater than one acre	75% of all buildings shall be greater than 20' in height	55'

- E. Maximum Impervious Coverage: 70%
- F. Maximum floor area ratio for nonresidential uses: 0.2 (exclusive of structured parking)
- G. Maximum Residential Density: 10 dwelling units per acre

Section 504.6 Special Development Regulations: All development proposed within the FTD shall meet the following special development regulations.

- A. The primary façade of all new buildings proposed within 100 feet of the existing cartway of the Fairway shall face the Fairway in compliance with Section 504.5.C and Section 504.8.A. The primary façade of all other new buildings proposed shall face a new public or private street or main access driveway in compliance with Section 504.5.C and Section 504.8.A.
- B. Existing nonconforming lots, uses, structures and sites must be registered with the Township. Any development beyond the permitted expansion of lawful nonconforming lots, uses, structures, and sites shall comply with the requirements and standards of the FTD. Buildings within a nonconforming site may be expanded by up to 15% of the total existing gross floor area of all buildings provided that the expansion complies with the use, setback, coverage, and other dimensional requirements of the FTD. Any expansion beyond 15% must comply with all requirements and standards of the FTD.
- C. Any development beyond the permitted expansion of lawful nonconforming uses, lands, and structures shall comply with the requirements and standards of the FTD.
- D. All buildings shall be laid out to make walking from one building to another and to buildings on adjacent sites as easy as possible. Safe and convenient sidewalks to and from all individual uses and buildings and crosswalks at all proposed intersections of public or private streets and main access driveways must be provided. Connections to sidewalks on adjacent properties shall be provided wherever possible.
- E. Developments shall be designed to support existing and/or future public transportation service and enhance pedestrian links to transit stops and nearby rail stations. Each site shall have sidewalks and pedestrian accessways that improve the overall connection to public transit.
- F. Bicycle racks capable of accommodating ten (10) bicycles shall be provided for every 250 surface parking spaces. Such bicycle racks shall be provided at appropriate locations through the site and shall be separated by a distance of at least one hundred (100) feet.
- G. Adjacent residential uses, as defined in Section 706.H, shall be screened from proposed development in the FTD in compliance with Section 504.8.G herein.
- H. Curb cuts along new and existing streets shall be limited to one per site for each street and shall be separated from those on other sites by at least 100 feet. For sites with more than 300 feet of frontage, two curb cuts shall be permitted. The Board of Commissioners may require curb cuts to provide access to more than one site and/or use, in order to reduce the number of the number of curb cuts along a particular street and improve traffic flow.
- I. New public or private streets shall be interconnected with each other and streets on adjacent sites. Where new streets are not proposed, sites shall be interconnected with access driveways wherever possible.
- J. A traffic/transportation study consistent with the requirements of Section 906 shall be required.
- K. Loading spaces and service areas for residential and nonresidential uses shall be located to the rear and sides of lots and screened from view from new and existing streets and adjacent

Section 504.6.K continued

properties. Off-street loading areas shall be provided in accordance with Section 904 of this chapter; however, separate off-street loading spaces shall not be required for businesses which utilize a step van or single unit truck for deliveries.

- L. Public open space areas are required for each development site. A minimum of 5 percent of the gross floor area of all buildings or portion thereof shall be required. Open space areas and plazas shall be accessible to the public.
- M. Parking for nonresidential uses shall be provided in compliance with Article IX. For residential uses, two parking spaces per dwelling unit shall be provided. For sites greater than one acre in size, at least one-half (.5) percent of the total number of parking spaces provided shall be dedicated car share facility spaces. Shared parking may be used to reduce overall number of parking spaces provided. A parking study analyzing parking demands during peak demand periods based on the Urban Land Institute (ULI) publication *Shared Parking, Second Edition*, or equivalent model is required. The maximum reduction for shared parking shall not exceed 25 percent of the total minimum required parking spaces.
- N. On-street parallel parking shall be permitted along proposed public or private streets and main access driveways and may count as part of the overall parking requirement. On-street parking spaces shall be a minimum of 22 feet in length.
- O. The form and design of all new development permitted in the FTD, including but not limited to buildings, structures, parking areas, and public open spaces and plazas, shall comply with the standards of Section 504.8.
- P. In connection with the overall integrated development of the FTD, individual lots may be created for purposes of financing and/or conveyancing, without the need for subdivision/land development approval. Such individual lots shall not be required to comply on an individual basis with the dimensional requirements of this ordinance, provided that (1) the overall development complies with such dimensional requirements; (2) the deeds conveying such separate lots contain covenants requiring the purchasers to, at all times, operate and maintain such lots in good order and repair and in a clean and sanitary condition; (3) cross-easements for parking areas and all appurtenant ways, pedestrian access, and utilities shall be created, recorded, and maintained between such lots; and (4) such cross-easements shall be subject to the approval of the township solicitor. The purchaser of any such lot shall so covenant and agree thereby to be bound by such conditions as set forth herein.
- Q. All other applicable provisions of the Abington Township Zoning Ordinance and Subdivision and Land Development Ordinance shall apply.
- R. Phasing of development and construction shall be permitted in the FTD. A phasing plan shall be submitted demonstrating compliance of each phase with FTD regulations.

Section 504.7 Bonus Provisions: Development proposed within the FTD shall qualify for an increase in height, nonresidential floor area ratio, impervious cover, and density as follows. The applicant shall be required to provide additional information in order to demonstrate that the bonus feature standards will be met.

- A. Bonus features totaling six (6) points, as required in the table below, qualify the applicant for a height increase up to 65 feet, an impervious cover increase to a maximum of 75%, a total maximum nonresidential floor area ratio of 0.225 (exclusive of structured parking), and 11.5

Section 504.7.A continued

dwelling units per acre

- B. Bonus features totaling eight (8) points, as required in the table below, qualify the applicant for a height increase up to 75 feet, an impervious cover increase to a maximum of 80%, a total maximum nonresidential floor area ratio of 0.25 (exclusive of structured parking), and 13 dwelling units per acre.

Bonus feature	Bonus points	Bonus feature standard
1. Transit amenities	1	Off-site crosswalk improvements that enhance access to public transit, on or off-site bus shelters, on-site designated transit pick-up/drop-off areas, bicycle lockers/shelters, and public commuter parking qualify. The provision of at least three such features shall be provided to earn the bonus point.
2. Additional street/landscape amenities	1	Gazebos, public art, water features, public restroom, and other amenities above and beyond those required by Section 504.8 qualify. At least three such amenities shall be provided in order to earn the bonus point.
3. Preserved woodland areas or mature trees	1	The preservation of at least 50% of mature trees or woodland areas on site shall qualify.
4. Road connection rights-of-way	1	Provision of public/private rights-of-way to allow the future connection between the Fairway and Old York Road.
5. Road connection improvements 50 to 100 feet	2	Provision of public/private rights-of-way and 50 to 100 feet of cartway to allow the future connection between the Fairway and Old York Road, including sidewalk improvements as per 504.8.C.2.
6. Road connection improvements more than 100 feet	3	Provision of public/private rights-of-way and more than 100 feet of cartway to allow the future connection between the Fairway and Old York Road, including sidewalk improvements as per 504.8.C.2.
7. Building materials	2	The use of decorative masonry for more than 50% of all proposed building facades. The use of concrete cinder blocks does not qualify.
8. Alternative energy sources	2	The use of solar or photovoltaic cells, geothermal power, or wind turbines that provides at least 15% of the expected annual energy use of each building.
9. Structured parking single use	2	Structured parking that provides at least 50% of the required minimum parking spaces for the development site qualifies. In any structured parking facility, at least 15% of the parking spaces must be available to the public.
10. Structured parking mixed-use	3	Structured parking that provides at least 50% of the required minimum parking spaces for the development site, with commercial/nonresidential uses on the first floor or "wrapped" on at least two sides with a mix of uses. In any structured parking facility, at least 15% of the parking spaces must be available to the public.

Section 504.7.B continued

11. Off-site traffic improvements	3	The provision of one off-site traffic improvement identified in the Abington Township Comprehensive Plan.
12. Green roofs	2	The green roof shall cover at least 50% of the total net roof area (the total gross roof area minus areas covered by mechanical equipment) of all proposed buildings. Green roofs shall be designed and installed under the direction of a professional with demonstrated expertise in green roof design and construction. Vegetation must be maintained for the life of the building. The green roof shall conform to the best available technology standards.
13. Green roofs	3	The green roof shall cover at least 70% of the total net roof area (the total gross roof area minus areas covered by mechanical equipment) of all proposed buildings. Green roofs shall be designed and installed under the direction of a professional with demonstrated expertise in green roof design and construction. Vegetation must be maintained for the life of the building. The green roof shall conform to the best available technology standards.
14. Green infrastructure/sustainable stormwater management	3	The use of recycled rainwater systems or grey water collection systems for 35% of the building's wastewater qualify. The system shall be designed and installed under the direction of a professional with demonstrated expertise in the design and construction of such facilities.

Section 504.8 Design Standards: The purpose of this section to establish standards for a pedestrian and transit-friendly center with enhanced building and landscape amenities. The intent of these standards is to ensure development contributes to a high-quality, mixed-use environment without limiting design flexibility and innovation. The applicant shall submit plans, elevations, renderings, reports, documents, and samples as necessary to demonstrate compliance with Sections 504.8.A through G.

A. Building Standards

1. Intent:
 - a. To define the streetscape by controlling building mass, form, and façade articulation without dictating architectural style.
 - b. To maintain the continuity of the street wall for most of the street length.
 - c. To ensure that building architecture generates visual interest and avoids large areas of monotonous building mass.
 - d. To create a lively and interesting streetscape by ensuring that proposed buildings are adequately fenestrated with windows and doors at street level.
2. Standards:
 - a. The primary façade of buildings shall be oriented towards the primary street or main access driveway and shall include a public entrance along this façade. The primary façade of all new buildings proposed within 100 feet of the existing cartway of the Fairway shall face the Fairway. Buildings located on corners shall treat the facades on each street or driveway as a primary facade. Buildings on corners may locate entrances on the corner

Section 504.8.A.2.a continued

- with an appropriate building articulation, such as a chamfered corner, turret, canopy, or other similar building feature.
- b. Side and rear building façades shall have architectural treatments that are complementary to the primary façade.
 - c. Developments with more than one building on the lot shall have a common and coherent architectural theme throughout the development.
 - d. All building entrances on primary façades shall be accentuated. Permitted entrance accents include: recessed, protruding, canopy, portico, overhang, or similar feature.
 - e. At least 60% of the length of the ground floor of all building façades facing a street or main access driveway shall consist of windows, glass doors, or other transparent building surfaces.
 - f. Smoked, reflective, or black glass in windows is prohibited.
 - g. Walls or portions of walls where windows are not provided shall have architectural treatments and details, such as a change in building material or color, lighting fixtures, decorative tiles, hanging planter, or similar feature.
 - h. Buildings shall use parapets, mansard, or sloped roof styles along all roof edges to conceal large vents, HVAC, and other rooftop equipment and structures.
 - i. Buildings must have at least a 3 foot break in depth, for the full height of the building, every one hundred (100) feet of continuous front façade.
 - j. Primary façades or portions of building façades facing a street, main access driveway, surface parking lots: either of which is greater than two hundred (200) linear feet, shall include at least three design elements, such as awnings, porches, canopies, towers, balconies, bays, gables, changes in materials, changes in façade treatments, etc.
 - k. The maximum dimension of any single building façade shall be 300 feet.

B. Parking Standards

1. Intent:

- a. To locate and orient surface parking in a way that reduces its visual and environmental impact.
- b. To minimize the visual impact of structured parking garages on the public realm.
- c. To mitigate the impact of vehicle noise, headlights, building lighting, and mechanical systems associated with parking facilities.
- d. To design structured parking garages to be visually compatible with the surrounding development.
- e. To encourage garages with a mixed-use character.

2. Standards:

- a. Surface parking lots shall be located to the rear of principal buildings or to the side. Surface parking shall not be located between a building's primary façade and a public or private street or main access driveway.
- b. Parking lots that have frontage on a public or private street or access driveway shall have a 5-foot wide landscaped area with a 3-foot-high wall or hedge to provide a screen. Parking lots adjacent to a residential use, as defined in Section 706.H, shall have a 10-foot wide landscaped area with a 6-foot-high wall or hedge. In addition to the wall or hedge, the landscaped area shall include any required street trees and a mix of groundcovers and shrubs. The landscaped areas shall be located on the side of the wall or hedge that is visible from the street or adjacent site.

Section 504.8.B.2 continued

- c. Vehicular interconnections between surface parking lots shall be provided wherever topography allows, subject to applicable township regulations and consistent with Section 504.8.
- d. At least 10% of the interior of any surface parking area shall be landscaped, measured to the inside curb line. The landscaped areas shall include a mix of groundcover, shrubs, and shade trees, so that at least 20% of the paved surface area shall be shaded by trees within 5 years.
- e. Surface parking areas shall be landscaped and screened according to an overall landscape plan prepared for the development by a registered landscape architect in compliance with Section G.
- f. On-street parking spaces are permitted along proposed public or private streets and main access driveways and may count as part of the overall parking requirement. On-street parking spaces shall be a minimum of 22 feet in length
- g. Structured parking shall have design treatments that provide visual interest, such as a change in color, texture, or building material. Blank walls are not permitted. Structured parking shall be designed to continue the architectural elements of the rest of the development.
- h. Cars in structured parking facilities shall be screened from the street through features such as grills, lattices, mock windows, louvers, false facades, etc. Such screening shall be in keeping with the rest of the building's architectural style and materials.
- i. Sidewalks to and from parking lots and garages shall be provided to ensure safe and convenient pedestrian access.

C. Streetscape Standards

1. Intent:

- a. To encourage streetscapes that support various modes of transit, including vehicular traffic, bicycling, and walking.
- b. To provide adequate and logical connections of streets and sidewalks within the development and between the development and adjacent neighborhoods.
- c. To provide sidewalks of adequate width to encourage pedestrian activities, such as walking, eating, and browsing storefronts.
- d. To provide areas for rest and relaxation at key connection points.
- e. To create a high quality streetscape that is visually interesting and provides shade and landscape amenities for pedestrians.

2. Standards:

- a. New public and private streets and main access driveways shall meet the standards of Article VI of Chapter 146, Abington Township Subdivision and Land Development Ordinance, subject to the following minimum cartway widths:

Public or private streets and main access driveways:	24' no parking
Public or private streets and main access driveways:	32' parking one side
Public or private streets and main access driveways:	40' parking both sides

- b. Developments shall incorporate traffic calming devices along public or private streets and main access driveways to slow traffic and improve pedestrian mobility and safety when possible. Traffic calming devices include curb bump-outs, raised median islands, speed bumps, and raised crosswalks or intersections, consistent with the most recent version of PennDOT's Traffic Calming Handbook.

Section 504.8.C.2 continued

- c. Street furniture shall include (though not limited to) benches, trash and recycling receptacles, planters, and bike racks. Street furniture shall be decorative, functional, durable, and properly scaled to the space. Benches and trash and recycling receptacles shall be provided at least every 100 feet. Bicycle racks are required every 300 feet. Planters are required every 50 feet.
- d. Street trees shall be planted along all streets and main access driveways every 40 feet in accordance with an overall landscape plan prepared for the development.
- e. Primary streets shall be separated from sidewalks by a 6-foot wide landscaped strip or decorative verge area, so as to allow for street trees and furnishings such as benches, light fixtures, etc. All other streets and driveways shall be separated from sidewalks by a 4-foot wide landscaped strip or decorative verge area. The decorative verge area may consist of planted areas and hardscaped areas designed to compliment sidewalk paving and provide areas for benches and rest and relaxation at intermediate points. At least 25% of this area shall be landscaped with a mix of groundcover, shrubs, and trees in accordance with an overall landscape plan prepared for the development in compliance with Section G below.
- f. Sidewalks with a minimum unimpeded width of 8 feet are required along all public and private streets and main access driveways. Sidewalks with a minimum width of 6 feet are required along secondary driveways. Sidewalks with a minimum width of 4 feet are required along alleys. Landscaped strips/verges are not required along alleys. These minimum sidewalk widths are intended for moving pedestrian traffic and shall not include landscaped strips/decorative verge areas along the curb line or additional paved areas immediately adjacent to buildings.
- g. Sidewalks are required to connect the street frontage to all front building entrances, parking areas, plazas, and any other destination that generates pedestrian traffic. Sidewalks shall connect to existing sidewalks on abutting tracts and other nearby pedestrian destination points and transit stops wherever possible.
- h. Sidewalks shall be constructed of durable, attractive materials like brick, stone, or colored or textured concrete accented with pavers. Proposed sidewalk materials and patterns shall be designed and coordinated to be compatible with those on adjacent properties. Sidewalk materials shall be continued across curb cuts when possible.
- i. All sidewalks shall have accessibility ramps and shall comply with the regulations of the Americans with Disabilities Act, as amended.
- j. Crosswalks not more than 10 feet and not less than 6 feet wide shall be required at all street intersections and wherever necessary to provide safe pedestrian access to buildings, open space areas, and public transit facilities.
- k. Crosswalks shall be constructed of patterned surface dressing, textured paving, or stone/brick/concrete pavers that make them easy to view and distinguish from the roadway. Crosswalk borders shall be highlighted with a contrasting color and/or texture. Installation and selected materials shall be durable and able to withstand vehicular traffic.

D. Public Open Space Standards

- 1. Intent:
 - a. To introduce elements of nature, such as trees and plants, into the urban environment.
 - b. To provide common areas for socialization, gatherings, and special events.
 - c. To provide visual relief in urban environment.
 - d. To provide open space of an adequate size and proportion to serve a variety of passive recreational needs.

Section 504.8.D continued

2. Standards:

- a. Required public open space areas shall consist of plazas, parks, central greens, and similar types of usable, public space. Sidewalks and pedestrian links are required to provide public access to such open space areas and ensure the areas are interconnected.
- b. Required public open space areas shall be designed as focal points within the development. Public access shall be guaranteed to all open space areas through a deed restriction or other means acceptable to the Township solicitor.
- c. An area equal to at least five (5) percent of the gross floor area of all residential and nonresidential buildings or portion thereof shall be required for public open space. The minimum required public open space area may be divided up and dispersed throughout the development; however, no individual area shall be smaller than 2,000 square feet or larger than 18,000 square feet. For sites greater than one acre in size, a minimum of two separate public open space areas shall be provided.
- d. The minimum dimension of any public open space area shall be 25 feet.
- e. At least 30% of the public open space area or plaza shall be landscaped with a mix of trees, shrubs, and groundcover in accordance with an overall landscape plan prepared for the development by a registered landscape architect in compliance with Section G below.
- f. Public open space areas shall be provided with benches, trash containers, and lighting fixtures in locations and amounts that are acceptable to the Township engineer or Township consultant.

E. Lighting Standards

1. Intent:

- a. To limit the potential negative effect of parking lot illumination on adjacent properties.
- b. To provide adequate light levels to create a safe, secure environment.
- c. To minimize light pollution and energy consumption.
- d. To incorporate lighting fixtures that are consistent in style to the overall development.

2. Standards:

- a. A lighting plan is required for all development proposed in the FTD. The amounts and spacing of fixtures proposed shall be approved by the Township engineer or Township consultant.
- b. Lighting fixtures shall be in keeping with the rest of the development's architectural style and materials.
- c. Lighting shall be directed towards the proposed development to shield abutting properties.
- d. Light fixtures shall be set back at least twenty (20) feet from adjacent residential uses, as defined in Section 706.H.
- e. No parking lot lighting standard or building fixture designed to illuminate the ground shall exceed eighteen (18) feet in height from grade level, and no pedestrian lighting standard shall exceed fourteen (14) feet in height from grade level.
- f. Light fixtures shall utilize a full-cutoff design.

F. Service Areas and Equipment Standards

1. Intent:

- a. To minimize the visual presence of service functions, such as delivery and refuse storage and pickup.

Section 504.8.F continued

2. Standards:

- a. The storage of refuse shall be provided inside the building(s) or within an outdoor area completely enclosed by either walls or opaque fencing at least 6 feet in height with self-latching gates. Any refuse area outside of the building shall be durable and designed to be architecturally compatible with the building(s) and shall not be located in the front of the building. No chain link fences or concrete cinder block shall be used for such outdoor enclosures.
- b. All wall-mounted or ground-mounted mechanical, electrical, communication, HVAC, and service equipment, including satellite dishes and vent pipes shall be screened from public view by parapets, walls, fences, landscaping, or other approved means.

G. Landscape/Hardscape and Screening Standards

1. Intent:

- a. To ensure that all site areas receive the appropriate level of thoughtful landscape design.
- b. To encourage the use of plant materials which are resource efficient, sustainable, and easily maintained.
- c. To ensure that specified plant materials are healthy, meet industry minimum standards, are suited to an urban environment, and are not invasive as defined by PA DCNR.
- d. To provide a high-quality and cohesive environment.
- e. To encourage a high standard of installation and maintenance.

2. General Landscaping Standards:

- a. The landscape regulations of Article VI of Chapter 146, Abington Township Subdivision and Land Development Ordinance and Section 801.U of the Abington Township Zoning Ordinance shall not apply in the FTD.
- b. A landscape plan prepared by a licensed landscape architect is required for all development in the FTD. The amount and spacing of plant material, hardscape, and amenities shall be approved by the Township planner or Township consultant.
- c. A minimum of 30% of proposed hardscape areas shall be shaded, using trees or shade structures.
- d. Convenient, durable seating shall be provided in group and individual configurations.
- e. At least one focal feature shall be provided per public open space area, such as a water fountain, sculpture, obelisk, etc.
- f. Provide safe, durable, attractive paving surfaces that require low maintenance.
- g. Lighting shall be provided to ensure public safety and security.
- h. The size and configuration of planting beds and all proposed plant material shall be appropriately scaled to the public open space where it is located.
- i. Landscaped and hardscaped areas shall be properly graded and drained for public safety and welfare.
- j. All plant material shall be guaranteed for 18 months to ensure the proper health and maintenance of landscaped areas.

3. Screening Standards:

- a. Any buffering and screening requirements of Article VI of Chapter 146, Abington Township Subdivision and Land Development Ordinance and Section 801.U of the Abington Township Zoning Ordinance shall not apply in the FTD.
- b. A landscape plan prepared by a licensed landscape architect is required for all development in the FTD. The amount, spacing, and level of opacity of plant material for

Section 504.8.G.3.b continued

- screening purposes shall be approved by the Township planner or Township consultant, based on adjacent uses.
- c. Where development in the FTD abuts any other zoning district, a year-round visual screen shall be provided. The minimum width of the landscape screen shall be one half of the required building setback. Where the required minimum setback is ten (10) feet, a six (6) foot high fence and five (5) foot wide landscaped area shall be required.
 - d. Where site elements, such as trash receptacles or mechanical/service equipment are proposed, a year-round visual screen shall be provided. Proposed plant material, spacing, and configuration must provide a minimum 6-foot high opaque screen surrounding the site element.
 - e. Screens shall consist of a mix of trees, shrubs, ornamental grasses, and groundcovers. Where space is limited, an architectural solution, such as a wall or privacy fence is permitted. Any such architectural feature shall be durable, easily maintained, and compatible with the development's proposed building design and materials. No chain link fences or concrete cinder block shall be used for screening purposes.
 - f. Screen plantings and architectural elements shall be selected and located so as not to create conditions that are hazardous to public safety.
 - g. Screen plantings and architectural elements shall not restrict or interfere with drainage patterns, rights-of-way, or easements.
 - h. All plant material shall be guaranteed for 18 months to ensure the proper health and maintenance of landscaped areas.

Section 4. The Abington Township Zoning Ordinance, Article X Sign Regulations, is hereby amended by adding new Section 1012 Sign Regulations for the FTD as follows:

- 1. All signage proposed in the FTD shall comply with the general requirements contained in Article X except as noted below. In the event of conflict, the provisions contained herein shall take precedence.
 - a. Permanent window signs are permitted on the first floor windows of any building and may have a total area of up to four (4) square feet or fifteen (15) percent of the area of each individual window, whichever is greater, with the overall total not to exceed 24 square feet. In addition, said permanent window sign may identify the business name, hours of operation, and/or store specific specialties.
 - b. Temporary window signs are permitted for up to thirty (30) days prior to the scheduled event and for the duration of the special event. And may have a total area of up to twenty-five (25) percent of the area of each individual window. Temporary window signs shall be permitted to identify special events and sales specific to the business or a special event or promotion hosted by the owner of the development.
 - c. Bunting and similar material signs advertising "Coming Soon" shall be permitted any time after lease signing and shall be removed on or before opening day of the business. The maximum size of any such sign shall be 20 square feet.
- 2. Specific sign types, area, height, and illumination in the FTD shall conform to Section 1008.2.B.2.b. of this chapter, except as noted below. In the event of conflict, the provisions contained herein shall supersede those contained in Article X.
 - a. Freestanding signs. Freestanding signs shall not exceed twenty (20) square feet of sign area on any one face and a mounting height of six (6) feet.
 - b. Monument signs. Monument signs shall be permitted to have up to 100 square feet of sign area on any one face and a mounting height of 10 feet. One (1) monument sign shall

Section 1012 continued

be permitted at each entrance to the development. In addition, each free-standing, single-tenant building shall be permitted to have one (1) monument sign. Monument signs should be constructed of materials that compliment the overall design of the development.

- c. Wall signs. Wall signs shall conform to the provisions of Sections 1008.2.B.2.b. and 1011.E.6.
- d. Canopy signs. Canopies shall not exceed forty percent (40%) of the wall plane of the tenant's façade and shall not project more than five (5) feet out from the façade. Graphics permitted on the front face of the canopy shall not exceed ten (10) inches in height. Graphics shall be located on the sloped portion of the canopy and shall not exceed twenty percent (20%) of the sloped area of the canopy.
- e. Directional signs. Up to three (3) monument or freestanding signs shall be permitted within the development to direct patrons to specific areas within the development. Each such directional sign shall be permitted to have up to twelve (12) square feet in sign area on each side and a mounting height of up to six (6) feet. Directional signs shall contain no advertising, logo, insignia or other commercial identifier.
- f. Illumination of signs. Free-standing signs, wall signs and canopy signs shall be permitted to have direct or indirect illumination. Monument signs and directional signs shall be permitted to have indirect illumination only. LED, digital message, and animated signs are prohibited.

Section 5. The Abington Township Zoning Ordinance, Article VIII Supplementary District Regulations, is hereby amended to allow more than one principal use per building or lot for new Use C-34 as follows:

Section 801.A.3. Except in Mixed Use zoning districts and mixed uses C-15 and C-34, no more than one (1) principal use shall be permitted on a lot or parcel. Not more than ten (10) percent of the total gross leasable floor area for nonresidential uses may be devoted to permitted accessory uses.

Section 6. The Abington Township Zoning Ordinance, Article IX Parking and Transportation Standards, is hereby amended to add parking requirements for Use C-34 as follows:

Section 901.3 Commercial Land Uses:

Use C-34: Transit-Oriented Development (TOD): Parking space requirements for nonresidential development in the FTD shall be calculated at the ratio of one (1) off-street parking space for every two hundred and fifty (250) square feet of gross leasable floor area, exclusive of structured parking.

Section 7. To the extent that the provisions of Section 504 of this Ordinance are inconsistent or conflict with other provisions of the Abington Township Zoning Ordinance or Subdivision and Land Development Ordinance otherwise applicable to the FTD, the specific regulations contained in Section 504 shall control and take precedence over such regulations.

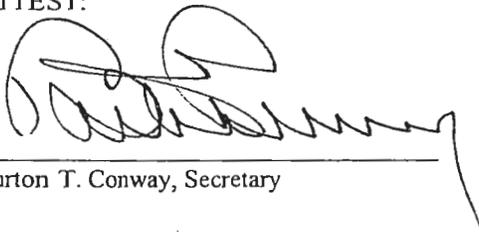
Section 8. The provisions of this Ordinance shall be independent and severable. If any part of this Ordinance is for any reason found to be illegal or invalid, such illegality or invalidation shall not affect or impair any of the remaining parts of this Ordinance, which shall continue to be fully operative as if the illegal or invalid part had not been enacted.

Section 9. This Ordinance shall be effective 5 days following its enactment.

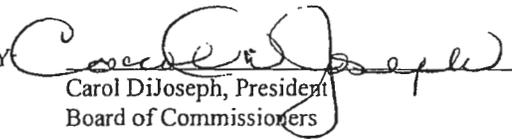
ENACTED AND ORDAINED this 6th day of January, 2011.

TOWNSHIP OF ABINGTON

ATTEST:



Burton T. Conway, Secretary

BY 
Carol DiJoseph, President
Board of Commissioners

ORDINANCE #2006

AN ORDINANCE OF THE TOWNSHIP OF ABINGTON TO AMEND THE OFFICIAL ZONING MAP TO REZONE COUNTY TAX PARCEL #3000-6664-4007, #3000-6663-6006 AND #3000-6665-2008 FROM THE (PB) PLANNED BUSINESS AND THE (R-1) RESIDENTIAL DISTRICT TO THE (FTD) FAIRWAY TRANSIT DISTRICT.

BE IT ENACTED AND ORDINANCE BY THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF ABINGTON, MONTGOMERY COUNTY, PENNSYLVANIA, that the Zoning Map of the Township of Abington, as previously amended is further amended as follows:

Section 1: The Official Zoning Map of the Township of Abington is hereby amended to rezone Tax Parcel #3000-6664-4007 and #3000-6663-6006 from the (PB) Planned Business District to the (FTD) Fairway Transit District and to rezone Tax Parcel #3000-6665-2008 from the R-1 Residential District to the (FTD) Fairway Transit District.

The area encompassed by the Zoning Map Change is described on Exhibit "A" attached hereto:

Section 2: The rezoning of the above Tax Parcels shall not affect any other property located in the Township of Abington.

Section 3: The Township Engineer is hereby authorized and directed to amend the Official Zoning Map to carry out the intent and purpose of this Ordinance amendment.

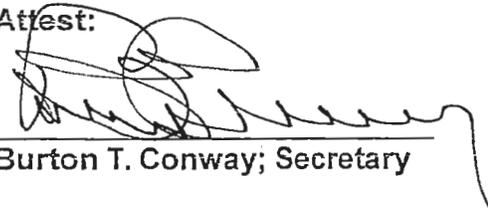
Section 4: All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of any inconsistency.

Section 5: This Ordinance shall become effective (5) days after adoption.

ENACTED and ORDAINED this 6th day of January 2011.

TOWNSHIP OF ABINGTON

Attest:


Burton T. Conway; Secretary

By: 
Carol DiJoseph, President
Board of Commissioners

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN LOT OR PARCEL OF GROUND BOUNDED AND DESCRIBED ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY, BRANDOLINI COMPANIES, THE FAIRWAY, APN #30-00-6636-006, UNIT 1, BLOCK 177; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 177, ABINGTON TOWNSHIP, MONTGOMERY COUNTY, COMMONWEALTH OF PENNSYLVANIA," PREPARED BY CONTROL POINT ASSOCIATES, INC., DATED 4/29/2005, LAST REVISED 6/21/2005, FILE NO. CP05042, SHEET NO. 1 OF 1, AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE FAIRWAY (A.K.A. THE FAIRWAY VALLEY ROAD, 80 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN), AT ITS INTERSECTION WITH THE DIVIDING LINE BETWEEN APN #30-00-6636-006, UNIT 1, BLOCK 177; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 177, LANDS NOW OR FORMERLY DONDEL ASSOCIATES AND APN #30-00-66632-001, UNIT 40, BLOCK 177, LANDS NOW OR FORMERLY DONDEL ASSOCIATES, SAID POINT BEING THE FOLLOWING FOUR (4) COURSES AND DISTANCES FROM A POINT OF CURVATURE ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD (A.K.A. ROUTE 611, 100 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN):

- A. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, CONNECTING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 82 DEGREES 54 MINUTES 43 SECONDS, AN ARC LENGTH OF 130.23 FEET, A CHORD BEARING OF SOUTH 11 DEGREES 40 MINUTES 22 SECONDS EAST, AND A CHORD DISTANCE OF 119.16 FEET TO A POINT OF TANGENCY, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAYS:

- B. SOUTH 53 DEGREES 07 MINUTES 43 SECONDS EAST, A DISTANCE OF 397.32 FEET TO A POINT OF CURVATURE, THENCE;
- C. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, HAVING A RADIUS OF 290.00 FEET, A CENTRAL ANGLE OF 45 DEGREES 56 MINUTES 17 SECONDS, AN ARC LENGTH OF 232.51 FEET, A CHORD BEARING SOUTH 76 DEGREES 05 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 226.34 FEET TO A POINT OF TANGENCY, THENCE;
- D. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 608.82 FEET TO THE TRUE POINT AND PLACE OF BEGINNING AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

1. ALONG THE DIVIDING LINE BETWEEN APN #30-00-6636-006, UNIT 1, BLOCK 144; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 179 AND APN #30-00-66632-001, UNIT 40, BLOCK 177, NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 95.00 FEET TO A CORNER, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 177, AND APN #30-00-49688-007, UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, L.P.:

2. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 13.83 FEET TO A POINT, THENCE;
3. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 435.37 FEET TO A CORNER, THENCE;
4. NORTH 45 DEGREES 47 MINUTES 00 SECONDS WEST, A DISTANCE OF 785.56 FEET TO A CORNER, THENCE;
5. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 177, AND APN #30-00-49704-009, UNIT 18, BLOCK 177, LANDS NOW OR FORMERLY HARBINSON YORK ROAD, L.P., NORTH 77 DEGREES 46 MINUTES 00 SECONDS EAST, A DISTANCE OF 520.60 FEET TO A CORNER, THENCE;
6. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 177, AND APN #30-00-65100-003, UNIT 3, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., SOUTH 45 DEGREES 43 MINUTES 00 SECONDS EAST, A DISTANCE OF 792.82 FEET TO A CORNER, THENCE;

THE FOLLOWING FIVE (5) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177; APN #30-00-66644-007, UNIT 33, BLOCK 177; APN #30-00-66652-008, UNIT 39, BLOCK 177, AND APN #30-00-66648-003, UNIT 34, BLOCK 177, PARCEL 'A', LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC.:

7. SOUTH 09 DEGREES 04 MINUTES 00 SECONDS EAST, A DISTANCE OF 57.48 FEET TO A CORNER, THENCE;
8. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 94.48 FEET TO A CORNER, THENCE;

9. NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 7.04 FEET TO A CORNER, THENCE;
10. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 166.00 FEET TO A CORNER, THENCE;
11. SOUTH 48 DEGREES 12 MINUTES 49 SECONDS EAST, A DISTANCE OF 524.85 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, THENCE;
12. ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, SOUTH 80 DEGREES 56 MINUTES 00 SECONDS WEST, A DISTANCE OF 1,400.88 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 821,918 SQUARE FEET OR 18.869 ACRES

Marc B. Kaplin
Direct Dial: (610) 941-2666
Direct Fax: (610) 684-2000
Email: mkaplin@kaplaw.com
www.kaplaw.com

June 15, 2016

Abington Township Planning and Zoning Official
Abington Township
1176 Old York Road
Abington, PA 19001

**RE: Registration of Legally Nonconforming Uses, Structures and Sites in the Fairway
Transit District**

Dear Sir/Madam:

In accordance with Section 504.6.B of Ordinance #2000, and as directed by Mark Penecale, this letter shall serve as registration of the legally nonconforming lots, uses and structures located on Tax Parcel Nos. 30-00-66636-00-6, 30-00-66644-00-7 and 30-00-66652-00-8, commonly referred to as the Baederwood Shopping Center ("**Shopping Center**"). The buildings and structures within the Shopping Center existed prior to January 6, 2011, the date on which the Board of Commissioners adopted Ordinance #2000, which created the Fairway Transit Zoning District ("**FTD District**") and rezoned the property to the FTD District.

Ordinance #2000 created the following legal nonconformities with regard to the Shopping Center:

1. Section 706.C requires that the development contain a mixture of office, commercial, residential and community uses. The development does not contain any residential use.
2. Section 504.4.B requires a minimum of 20% residential floor area and there is 0% residential floor area.
3. Section 504.5 contains building setback requirements from the following locations that are not met:
 - a. From curb line
 - b. From public ROW
 - c. From service alleys

- d. From side and rear property lines
 - e. From off-street parking areas
 - f. Between adjacent buildings
4. Section 504.6.D and E require crosswalks from building to building and to all street connections and adjoining properties. Such sidewalks do not exist.
5. Section 504.6.F requires bicycle racks at a rate of one 10 bicycle rack for every 250 surface parking stalls and no such bicycle racks exist.
6. Section 504.6.G requires that adjacent residential uses be screened from development in the FTD District. The required screening from adjacent residential uses is not provided.
7. Section 504.6.H limits the number of curb cuts to two and there are four existing curb cuts adjacent to the Fairway.
8. Section 504.6.K requires all loading and service areas to be screened from view from all streets and adjacent properties and no such screening exists.
9. Section 504.6.L requires a minimum of 5% of gross floor area to be dedicated as public open space. There is only one small patio area that functions as open space and is not dedicated to the Township.
10. Section 504.6.M requires ½ % of parking to be dedicated to car share facilities and there are no such car share facilities.
11. Section 504.8.A.2(b) requires that side and rear facades have architectural treatments that are complimentary to the primary façade and existing side and rear facades have no such architectural treatments.
12. Section 504.8.B.2(a) requires that surface parking lots be located to the rear or side of principal buildings and prohibits surface parking areas between the primary façade and the street. Existing surface parking areas are located between the primary façade and the street.
13. Section 504.8.B.2(b) requires that parking lots that have frontage on a public street have a 5-foot wide landscaped area with a 3-foot high wall or hedge to provide a screen. No such landscaping or screening exists.
14. Section 504.8.B.2(d) requires that at least 10% of all surface parking areas be landscaped with a design that will allow at least 20% of all paved areas to be shaded within five years and no such landscaping is present.

15. Section 504.8.C.1 and 2 require sidewalks of a design width to permit walking, bicycling and the like, and no such sidewalks are provided.

16. Section 504.8.C.2(f) requires sidewalks along onsite access drives. No such sidewalks are provided.

17. Section 504.8.C.2(g), (h), (i), (j) and (k) design standards are not met. Specifically:

(a) Traffic calming devices are required along main access driveways and no such traffic calming devices are in place.

(b) Street furniture including benches and trash and recycling receptacles are required every 100 feet, bicycle racks are required every 300 feet and planters are required every 50 feet. The required street furniture at the required spacing is not provided.

(c) Street trees are required along all streets and main access driveways every 40 feet. No such street trees are provided.

(d) Driveways are required to be separated from sidewalks by a 4-foot wide landscaped strip or decorative verge area, and no such landscaped strips or verge areas are provided.

(e) 8 foot wide sidewalks are required along streets and main access driveways, 6 foot wide sidewalks are required along secondary driveways, and 4 foot wide sidewalks are required along alleys. The required sidewalks at the required widths are not provided.

18. Section 504.8.E.2(e) requires that parking lot light standards not exceed 18 feet in height and pedestrian lights not exceed 14 feet in height. Existing parking lot light standards and pedestrian lights exceed the maximum heights permitted.

19. Section 504.8.G.2(d) requires that 30% of hardscaped areas be shaded using trees or shade structures. The required shaded areas are not provided.

20. Section 504.8.G.2(e) requires that there be a focal feature such as a water fountain or sculpture in open space areas. The required focal feature is not provided.

21. Section 504.8.G.3(c) requires that a visual screen with a minimum width of half of the required setback be provided where the site abuts another zoning district. The required visual screen is not provided where the site abuts other zoning districts.

22. Section 504.8.G.3(d) requires a 6 foot high opaque screen around trash and mechanical service areas. The required opaque screen are not provided.

Abington Township Planning and Zoning Official

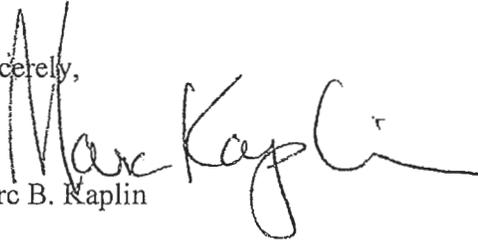
June 15, 2016

Page 4

Please contact me if you have any questions or require any additional information.

Sincerely,

Marc B. Kaplin



MBK:wrk

Cc via electronic transmission:

Larry Matteo (lmatteo@abington.org)

Mark A. Penecale (mpenecale@abington.org)

Michael P. Clarke, Esquire (mclarke@rudolphclarke.com)

Fred Snow (fsnow@brandolinicompanies.com)

Adam Benosky (abenosky@bohlereng.com)



RECORDER OF DEEDS
MONTGOMERY COUNTY
Nancy J. Becker

One Montgomery Plaza
Swede and Alry Streets ~ Suite 303
P.O. Box 311 ~ Norristown, PA 19404
Office: (610) 278-3289 ~ Fax: (610) 278-3869

DEED BK 5879 PG 02264 to 02285
INSTRUMENT # : 2013072031
RECORDED DATE: 07/05/2013 03:49:54 PM



2947171-0008W

MONTGOMERY COUNTY ROD

OFFICIAL RECORDING COVER PAGE

Page 1 of 22

Document Type: Easement	Transaction #: 2912368 - 2 Doc(s)
Document Date: 06/25/2013	Document Page Count: 21
Reference Info:	Operator Id: dawhitner
RETURN TO: (Mail) STEWART TITLE GUARANTY CO 900 WEST VALLEY WAYNE, PA 19087	PAID BY: STEWART TITLE GUARANTY CO

* PROPERTY DATA:		
Parcel ID #:	30-00-66644-00-7	30-00-66652-00-8
Address:	0 THE FAIRWAY	1575 THE FAIRWAY
		30-00-66636-00-6
		1631 THE FAIRWAY
Municipality:	PA Abington Township (100%)	PA Abington Township (0%)
School District:	Abington	Abington

*** ASSOCIATED DOCUMENT(S):**

CONSIDERATION/SECURED AMT: \$0.00	DEED BK 5879 PG 02264 to 02285 Recorded Date: 07/05/2013 03:49:54 PM	
FEES / TAXES:	I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office in Montgomery County, Pennsylvania.  <i>Nancy J. Becker</i> Nancy J. Becker Recorder of Deeds	
Recording Fee:Easement		\$78.00
Additional Pages Fee		\$34.00
Additional Parcels Fee		\$20.00
Affordable Housing Pages		\$68.00
Affordable Housing Parcels		\$2.00
Rejected Document Fee		\$10.00
Total:	\$212.00	

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

Certification signature by montgomery.county.rod@propertyinfo.com, Validity Unknown

Certified and Digitally Signed

Validation may require Adobe 'Windows Integration'

eCertified copy of recorded # 2013072031 (page 1 of 22)
Montgomery County Recorder of Deeds



DECLARATION OF EASEMENTS

RECORDER OF DEEDS
MONTGOMERY COUNTY
2013 JUL -1 AM 8:48

Prepared By:

Kaplin, Stewart, Meloff, Reiter & Stein, P.C.
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, Pennsylvania 19422
Attn: Simi Kaplin Baer, Esquire
Phone: (610) 941-2657
Fax: (610) 684-2126

RECORDER OF DEEDS
MONTGOMERY COUNTY
2013 JUL -5 AM 9:47

Please record and return to:

Kaplin, Stewart, Meloff, Reiter & Stein, P.C.
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, Pennsylvania 19422
Attn: Simi Kaplin Baer, Esquire
Phone: (610) 941-2657
Fax: (610) 684-2126

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
30-00-66644-00-7 ABINGTON
THE FAIRWAY
BAEDERWOOD LP \$10.00
B 177 U 033 L 2109 DATE: 07/05/2013 JO

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
30-00-66652-00-8 ABINGTON
1575 THE FAIRWAY
BAEDERWOOD LP \$10.00
B 177 U 039 L 4293 DATE: 07/05/2013 JO

Parcel Numbers: 30-00-66636-006
30-00-66652-008
30-00-66644-007
Abington Township, Montgomery County, Pennsylvania

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
30-00-66636-00-6 ABINGTON
1631 THE FAIRWAY
BAEDERWOOD LP \$10.00
B 177 U 001 L 4546 DATE: 07/05/2013 JO

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (hereinafter referred to as the "Declaration") is made this 25th day of June, 2013 by BAEDERWOOD LIMITED PARTNERSHIP, a Delaware limited partnership (the "Declarant"), for itself, its successors and assigns.

BACKGROUND

A. Declarant is the record owner of certain real properties known as Tax Parcel #30-00-66636-006 with an address of 1631 Fairway Valley Road, Abington Township, Montgomery County, Pennsylvania and Tax Parcel #30-00-66652-008, 1575 Fairway Valley Road, Abington Township, Montgomery County, Pennsylvania, each of which is more fully described on Exhibit "A" attached hereto and made a part hereof (collectively, and together with the buildings and improvements constructed thereon and all easements, rights and appurtenances belonging thereto, the "Shopping Center Property"). The Shopping Center Property consists of approximately ten and one half (10.5) acres in the aggregate.

B. The Shopping Center Property is currently improved with a combination of retail and office buildings, including a strip center with second story offices, and a stand-alone supermarket, as well as associated parking, drive aisles and entrance facilities which connect to Fairway Valley Road.



C. Declarant is also the record owner of certain property known as **Tax Parcel #30-00-66644-007**, which property does not have a street address, but is adjacent to the north side of the Shopping Center Property ("**Vacant Property**"). The Vacant Property consists of approximately eight and forty two one hundredths (8.42) acres and is more fully described on Exhibit "B" attached hereto and made a part hereof.

D. The Shopping Center Property and the Vacant Property are sometimes hereinafter collectively referred to as the "**Properties**." Each owner of the Properties may be referred to hereinafter as an "**Owner**" and, collectively, as the "**Owners**."

E. The Properties are zoned Fairway Transit District ("**Zoning**"). The Zoning permits a mix of residential and commercial uses on the Properties. The Declarant intends, ultimately, to develop the Vacant Property as a multi-family residential project ("**Future Development**") and desires to provide for access to and from the Vacant Property from and to Fairway Valley Road. Based on the Zoning, the development of the Vacant Property as a multi-family residential project may permit the expansion of the commercial development on the Shopping Center Property. Declarant also desires to grant stormwater management, water, sanitary sewer and general utility easements over the Shopping Center Property for the benefit of the Vacant Property for the purpose of enabling the Future Development of the Vacant Property. Declarant also desires to grant an easement for the benefit of the Shopping Center Property to enable the owner of the Shopping Center Property to use, maintain, repair and restore that portion of one of the buildings currently located on the Shopping Center Property which encroaches onto the Vacant Property.

F. The Declarant desires to confirm the obligation of the Owners to develop and redevelop the Properties in accordance with the requirements of the Zoning.

G. Attached hereto and made a part hereof as Exhibit "C" is a plan entitled Easement Plan, prepared by Bohler Engineering, Inc., dated April 3, 2013 ("**Easement Plan**").

H. Attached hereto and made a part hereof as Exhibit "D" is a plan entitled Driveway Plan, prepared by Bohler Engineering, Inc., dated April 3, 2013 ("**Driveway Plan**").

NOW, THEREFORE, in consideration of the covenants, easements, conditions, and restrictions set forth herein, the Declarant, intending to be legally bound, hereby declares as follows:

1. Background. The Background of this Declaration and all exhibits attached hereto are fully incorporated herein and shall form a part of this Declaration.

2. Submission to the Declaration. To accomplish the ends set forth in the Background of this Declaration, Declarant hereby submits the Properties to the terms, conditions and provisions of this Declaration and hereby declares the Properties shall be held, sold and conveyed subject to the covenants, easements, conditions, and restrictions contained herein, which are for the purpose of protecting the value and desirability of the Properties and which shall run with the Properties subjected to this Declaration and which shall be binding on, and inure to the benefit of, all parties having any right, title or interest therein or any part thereof, their heirs, successors, successor-in-title and assigns.

3. Applicability. This Declaration shall be applicable to the Properties. All present and future record Owners, occupants and/or tenants of either of the Properties, their guests, licensees, servants, agents, employees or any other person(s) or legal entity who shall be permitted to use the Properties shall be subject to this Declaration.

4. Grant of Easements.

(a) Temporary Construction Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, the right, at such time as is required or



convenient for the construction of the Future Development, a temporary construction easement to construct the pathway which connects the Vacant Property to Fairway Valley Road ("**Connecting Driveway**") over the portion of the Shopping Center Property as approximately depicted on the Driveway Plan ("**Connecting Driveway Easement Area**"). The Owner of the Vacant Property, at its sole cost and expense, shall be permitted to construct the Connecting Driveway and all appurtenances and improvements associated therewith in the general location set forth on the Driveway Plan and in all cases within the Connecting Driveway Easement Area, provided that: (i) such use is kept within the reasonable requirements of construction work expeditiously pursued, (ii) such construction activity shall not unreasonably interfere with construction or the conduct or operation of any business on the Shopping Center Property, (iii) customary liability and property damage insurance is maintained protecting the Owner of the Shopping Center Property from the risk involved in connection therewith, which, at a minimum, shall include the coverages set forth on Exhibit "E" attached hereto and made a part hereof, (iv) upon the completion of any work on the Shopping Center Property, the Owner of the Vacant Property shall promptly, at its own cost and expense, repair and/or restore any damage done and all areas disturbed and leave such areas free and clear of trash, rubbish, loose dirt and construction materials and restore all such areas to their original grade and substantially to the condition as existed prior to such work being done (except as shown on the Easement Plan or as necessary to construct the Connecting Driveway), (v) the construction performed is authorized by the applicable governing agency and is performed in a good and workmanlike manner, lien free and in compliance with all governmental requirements, (vi) the work does not unreasonably and materially interfere with the use, occupancy or enjoyment of any part of the Shopping Center Property, (vii) the construction and other activity conducted by the Owner of the Vacant Property does not violate the terms of, or result in the landlord being in default under, any lease in effect at the Shopping Center Property or entitle any tenant of the Shopping Center Property to terminate its lease or abate or reduce the rent payable thereunder, (viii) the construction and other activity conducted by the Owner of the Vacant Property does not violate the terms of any permit or approval issued with respect to the Shopping Center Property, and (ix) the Owner of the Vacant Property shall have given the Owner of the Shopping Center not less than forty eight (48) hours' notice of its intent to enter on the Shopping Center Property for any purpose (the foregoing, collectively, the "**Entry and Activity Conditions**").

(b) Access Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property, for the benefit and use of the Vacant Property or any portion thereof, a perpetual non-exclusive right and easement over the Connecting Driveway ("**Connecting Driveway Easement Area**") to provide pedestrian and vehicular access, ingress and egress between Fairway Valley Road and the Vacant Property, as well as the right to install and maintain a sign for the Future Development at the intersection of the Connecting Driveway and Fairway Valley Road in approximately the location depicted on the Easement Plan ("**F.D. Sign**"), provided the same does not reduce or restrict or adversely affect the signage which the Owner of the Shopping Center Property would otherwise be entitled to erect, now or hereafter, on the Shopping Center Property. The Owner of the Vacant Property shall be required, at its sole cost and expense, to obtain all permits and approvals necessary to construct the F.D. Sign, and, further shall be responsible, at its sole cost and expense to install, repair, maintain and replace, as necessary, the F. D. Sign and associated landscaping, all of which shall be kept and maintained by the Owner of the Vacant Property, at its sole cost and expense, in good and safe condition and consistent with the standards of a first class shopping center. The Owner of the Shopping Center Property shall not place or construct any structure or object on the Connecting Driveway which would materially impair the free flow of vehicular or pedestrian traffic over the Connecting Driveway or inhibit access over the Connecting Driveway from and to the Vacant Property to and from Fairway Valley Road. Except as may be required by any governmental entity, the Owner of the Shopping Center Property shall not modify or relocate the curb cuts/access from the Shopping Center Property to Fairway Valley Road without the written consent of the Owner of the Vacant Property, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) Connecting Driveway Maintenance Easement. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Connecting Driveway, including, but not limited to the prompt removal of snow and ice, consistent with maintenance of a first class shopping center. Notwithstanding the forgoing, in the event that the Owner of the Shopping Center Property fails to maintain, repair or replace the Connecting Driveway in accordance with this



Section 4(c) after written notice from the Owner of the Vacant Property of, and specifying the nature of, such failure, Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property or any portion thereof the perpetual, nonexclusive right and easement to enter upon the Shopping Center Property to maintain, repair and/or replace the Connecting Driveway, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(c) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway, provided that in the case of an emergency requiring immediate action by the Owner if the Vacant Property prior notice of intent to enter shall not be required if it cannot reasonably be given so long as notice of entry is given as soon as reasonably practical.. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, one hundred percent (100%) of the costs to maintain, repair and/or replace the Connecting Driveway All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(c), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(d) Storm Water Easement. The Declarant acknowledges that the Owner of the Vacant Property intends to construct storm water management facilities on the Vacant Property to manage the storm water on the Vacant Property and shall be responsible to obtain all necessary permits and approval to do so prior to the construction of the Future Development. However, in addition to that, Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, the perpetual, nonexclusive right and easement to enter onto the Shopping Center Property to excavate, tie into and use the storm water drainage system located on the Shopping Center Property including any detention or retention basin ("Storm Water System"), that is located within the area depicted on the Easement Plan as the 20' Utility Easement ("Utility Easement Area") or the Connecting Driveway Easement Area and to install, maintain, repair and replace additional storm sewer lines serving the Vacant Property within the Utility Easement Area or the Connecting Driveway Easement Area, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(d) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway and no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with storm water management at the Shopping Center or damage the storm water lines and facilities serving the Shopping Center. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Storm Water System (which for purposes of this Section 4(d) shall not be construed to include any storm sewer lines or facilities exclusively serving the Vacant Property, 100% of the costs of which shall be paid by the Owner of the Vacant Property) consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Storm Water System shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively.. Any alteration in the natural water flow which may occur as a natural consequence of normal construction and operation of the Future Development shall be permitted. Notwithstanding the foregoing, however, if it is determined by an applicable governmental authority that the Future Development will or does produce more cubic feet of water per second than the Storm Water System is designed to handle/convey, the Owner of the Vacant Property, at its sole cost and expense, shall make the modifications necessary to support the increased storm water flow into the Existing Storm Water System. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Storm Water System. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(d), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including



reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(e) Water Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, nonexclusive right and easement to enter on to the Shopping Center Property to excavate and tie into the water lines that are located within the Utility Easement Area (the "Existing Water Lines") or to install, maintain, repair and replace additional water lines serving the Vacant Property within the Utility Easement Area or the Connecting Driveway Easement Area, as well as the right to use all water services facilities, including pipes, lines, meters, mains, laterals and other water facilities located on the Shopping Center Property to provide water service to the Vacant Property, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(e) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway and no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with water service to the Shopping Center or damage the water lines and facilities serving the Shopping Center. The Owner of the Vacant Property shall, at its sole cost and expense, cause all water use by the Vacant Property to be separately metered and shall be responsible for payment of all water use by the Vacant Property directly to the applicable utility. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Existing Water Lines consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Existing Water Lines shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Existing Water Lines. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(e), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(f) Sanitary Sewer Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, nonexclusive right and easement to enter in to the Shopping Center Property to excavate and to connect the Vacant Property to the sanitary sewer system serving the Shopping Center Property within the Utility Easement Area (the "Existing Sanitary Sewer System") or to install, maintain, repair and replace additional sewer lines serving the Vacant Property within the Utility Easement Area or the Connecting Driveway Easement Area, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(f) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Existing Sanitary Sewer System consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Existing Sanitary Sewer System shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Existing Sanitary Sewer System. All amounts invoiced by the Owner of the Shopping Center



pursuant to this Section 4(f), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, nonexclusive easement to use the sanitary sewer system located on the Shopping Center Property, including pipes, laterals, mains, manholes and other facilities and appurtenances thereto and other sanitary sewer facilities for the conveying and processing of effluent derived from the Vacant Property, provided that no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with sanitary sewer service to the Shopping Center or damage the sewer lines and facilities serving the Shopping Center. Declarant acknowledges, and by its acceptance of the easement granted under this Section 4(f) the Owner of the Vacant Property agrees, that the Owner of the Vacant Property shall be responsible to purchase sewer capacity for the Future Development at its sole cost and expense from the applicable municipal authority.

(g) General Utility Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, non-exclusive right and easement to enter upon the Shopping Center Property to connect to the electric, gas, cable, fiber optic and similar utility lines (collectively, the "Utility Facilities") located within the Utility Easement Area (the "Existing Utility Facilities") or to install, maintain repair and replace additional Utility Facilities within the Utility Easement Area or the Connecting Driveway Easement Area, together with the perpetual right and non-exclusive easement to obtain the services provided by the Utility Facilities and any replacements thereof and additions thereto through the Utility Facilities, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(g) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway and no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with utility service to the Shopping Center or damage the Utility Facilities serving the Shopping Center. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Existing Utility Facilities consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Existing Utility Facilities shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Existing Utility Facilities. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(g), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(h) No Obstruction. The Connecting Driveway Easement Area and the Utility Easement Area shall be referred to herein collectively as the ("Easement Areas"). The Owner of the Vacant Property acknowledges that, other than on the Connecting Driveway Easement Area, certain buildings and other improvements ("Improvements") have previously been constructed on the Shopping Center Property and such existing improvements may encroach upon portions the Easement Areas. Owner of the Vacant Property



consents to any such encroachments of the Improvements onto the Easement Areas existing as of the date hereof, and to any replacement of such Improvements in accordance with this Declaration, and agrees to reasonably restore any damage Owner of the Vacant Property causes to such Improvements in the exercise of the rights and privileges granted under this Easement Agreement. Provided, however, that the Declarant does hereby covenant that after the date of this Declaration, no structure or other obstruction (including trees and vegetation) other than as a replacement for an existing Improvement, shall be erected or installed on or in the Easement Areas which in the reasonable opinion of the Owner of the Vacant Property may interfere with the Owner of the Vacant Property's exercise of the rights and privileges granted hereunder (collectively the "**Prohibited Obstructions**"). Notwithstanding anything else in this Easement Agreement to the contrary, the Owner of the Vacant Property, in the exercise of the rights and privileges granted hereunder, shall not be responsible for any damage to any Prohibited Obstructions after the date of this Declaration.

(i) Noninterference. Owner of the Vacant Property shall use all reasonable means to avoid inconvenience to Declarant and the Owner of the Shopping Center Property, including any interruption in any utility service to the Shopping Center Property, or damage or injury to the Shopping Center Property during the course of any entry and the conduct of any work permitted under this Declaration. Without limiting the foregoing, the Owner of the Vacant Property shall maintain a minimum of two drive aisles across the Easement Areas at all times that it is engaged in any activity thereon. After any entry on to the Shopping Center Property, Owner of the Vacant Property shall restore, at its sole cost, the Shopping Center Property to its prior condition and generally leave the area in good condition. All lines and facilities installed on the Shopping Center Property by the Owner of the Vacant Property shall be properly maintained and repaired and kept in good working order, and upon any cessation of use shall be properly tied off, capped and closed out, by the Owner of the Vacant Property at its sole cost and expense. The Owner of the Vacant Property shall not permit any liens to be filed against the Shopping Center Property in connection with any work done on the Shopping Center Property by or for the account of the Owner of the Vacant Property, and if any such liens are filed the Owner of the Vacant Property shall cause the same to be removed of record within thirty (30) days of filing, failing which the Owner of the Shopping may cause the same to be removed of record, by payment or posting of a bond, and all costs and expenses incurred by the Owner of the Shopping Center in connection therewith shall be immediately due and payable by the Owner of the Vacant Property. In the event the Owner of the Vacant Property fails to do the same on demand, all amounts owed to the Owner of the Shopping Center pursuant to this Section 4(i), together with interest from the date of demand at the rate of twelve percent (12%) per annum, compounded monthly, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time of demand. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(j) Parking Easements. The Easement Plan depicts fifteen (15) parking spaces located on the Vacant Property which serve the Shopping Center Property ("**Commercial Parking Spaces**"), said Commercial Parking Spaces being labeled as such on the Easement Plan. The Easement Plan also depicts ten (10) parking spaces which serve the Shopping Center Property as encroaching on the Vacant Property ("**Retail Parking Spaces**"), said Retail Parking Spaces being labeled as such on the Easement Plan, and the area of the Vacant Property on which such Retail Parking Spaces, together with paved access thereto, are located being referred to herein as the "**Parking Encroachment Area**". The Declarant hereby grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property, or any portion thereof, and said owner's tenants and invitees, a perpetual, exclusive right and easement to enter upon the Vacant Property, and to use all roads and drives now or hereafter located on the Vacant Property, for the purpose of access to and from the Commercial Parking Spaces and the right to use the Commercial Parking Spaces for parking vehicles and placing and using (including depositing trash in and emptying) one or more dumpsters, and to maintain and repair the Commercial Parking Spaces, during the hours that businesses on the Shopping Center Property are open and for no other use. The Owner of the Vacant Property shall have the right, at its sole cost and expense to screen any dumpsters placed in the Commercial Parking Area (hereafter defined)



provided such screening does not unreasonably interfere with the use of such dumpsters by the Owner of the Shopping Center Property and such screening is maintained by the Owner of the Vacant Property, at its sole cost and expense, in good and safe condition and consistent with the standards of a first class shopping center. The Declarant hereby further grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property, or any portion thereof, and said owner's tenants and invitees, a perpetual, exclusive right and easement to enter upon the and use the Parking Encroachment Area for parking vehicles, and to maintain and repair the Retail Parking Spaces, during the hours that businesses on the Shopping Center Property are open and for no other use. No structure or other obstruction (including trees and vegetation), shall be erected or installed on or within the area of the Vacant Property on which the Commercial Parking Spaces (the "Commercial Parking Area") are located or the Parking Encroachment Area, or in any other areas on the Vacant Property providing access to the Commercial Parking Area or the Parking Encroachment Area, which in the reasonable opinion of the Owner of the Shopping Center Property may interfere with the Owner of the Shopping Center Property's exercise of the rights and privileges granted hereunder.

(k) Encroachment Easement. The Easement Plan depicts an encroachment onto the Vacant Property by a portion of one of the buildings currently located on the Shopping Center Property (the "Building Encroachment"), the area of the Vacant Property on which the Building Encroachment is located being referred to herein as the "Building Encroachment Area". The Declarant hereby confirms that the Building Encroachment is among the "Encroachments" described in that certain Deed of Easement between Dondel Associates, as Grantor, and Dondel Associates, as Grantee, dated August 23, 1989 and recorded in Deed Book 4921, Page 1011 of the Montgomery County Recorder's Office (the "Deed of Easement"). The Declarant acknowledges that certain utility lines and facilities are also located with the area of the Vacant Property described on Exhibit "D" to the Deed of Easement (the "Existing Easement Area") and that the Owner of the Shopping Center Property has, and the Declarant hereby grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property, or any portion thereof, the perpetual right and easement to continue the Building Encroachment and to use, maintain, repair, replace and restore, the Building Encroachment and other Encroachments (as defined in the Deed of Easement) and the utility lines and facilities located in the Existing Easement Area and to enter upon the Existing Easement Area for the purpose of maintaining, repairing, restoring and replacing the improvements and utility lines and facilities located within the Existing Easement Area and to use all roads and drives now or hereafter located on the Vacant Property (or in the absence thereof the unimproved surface of the Vacant Property) for the purpose of access to and from the Existing Easement Area. No structure or other obstruction (including trees and vegetation), shall be erected or installed on or within the Existing Easement Area, or in any other areas on the Vacant Property providing access to the Existing Easement Area, which in the reasonable opinion of the Owner of the Shopping Center Property may interfere with the Owner of the Shopping Center Property's exercise of the rights and privileges granted hereunder. The Owner of the Vacant Property shall, at its sole cost and expense, maintain the Existing Easement Area in a neat and clean condition, including seeding, fertilizing and regularly mowing all lawn areas and keeping all landscaping in good and attractive condition. If the Owner of the Vacant Property fails to install maintain the Existing Easement Area in accordance with this Section 4(k) after written notice from the Owner of the Shopping Center Property of, and specifying the nature of, such failure, Declarant hereby grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property or any portion thereof the perpetual, nonexclusive right and easement to enter upon the Existing Easement Area to maintain the Existing Easement Area. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, one hundred percent (100%) of the costs to maintain the Existing Easement Area. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(k), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.



5. **Zoning.** Notwithstanding the fact that the Township may consider the Properties as a single tract, each Owner shall be required to independently maintain on its Property the requisite number of parking spaces that would be required by the Zoning, if each of the Properties was analyzed independent from the other. To the extent required by the Township or other applicable governmental authority each Owner shall join with the other as a petitioner or applicant whenever required on any applications to obtain approvals and permits, provided that the non-applicant party shall not be obligated to incur any costs, expenses or monetary obligation in connection therewith. Notwithstanding any other provision of this Declaration, all rights and easements granted to the Owner of the Vacant Property shall be exercised, used and enjoyed in such manner and only to the extent that the same do not limit or in any manner restrict any future development, including expansion, of the Shopping Center Property that would otherwise be permitted but for the easements (excluding the Connecting Driveway Easement) granted in this Declaration. If at any time the Owner of the Shopping Center Property proposes to further develop the Shopping Center Property or any portion thereof for non-residential purposes, or expand any improvements now or hereafter existing on the Shopping Center Property, and such non-residential development or expansion is prohibited or restricted as a result of any use of the Shopping Center Property, including, without limitation, the Storm Water System, the water lines and facilities, the sanitary sewer system and the Utility Facilities, by the Owner of the Vacant Property, but excluding the Connecting Driveway Easement, even though permitted under this Declaration, the use of the Shopping Center Property by the Owner of the Vacant Property shall thereafter be limited to such uses as may be made without adversely affecting any such proposed non-residential development or expansion of the Shopping Center Property.

6. **Insurance.** In addition to the insurance required to be maintained by the Owner of the Vacant Property pursuant to Section 4(a), the Owners of each of the Properties shall maintain liability insurance on their respective Properties, naming the other as additional insured, which insures against bodily injury and death and property damage that arises out of or is caused by the use or entry upon the other party's property. Upon the request of the other, each party shall provide evidence to the other that the insurance required herein is in full force and effect. All insurance shall be written on an "occurrence" basis with a financially responsible company licensed to issue such insurance in the Commonwealth of Pennsylvania.

7. **Indemnification.** Each party shall indemnify, defend and hold the other party harmless from any liability, cost or expense incurred by the indemnified party by reason of injury to persons or damage to property arising out of or in connection with the indemnifying party's use or entry upon the Properties under this Declaration, including any liability to tenants, except for such cost or expense caused by the negligence of the indemnified party, its agents, employees or independent contractors.

8. **No Liens.** The Owner of the Vacant Property shall promptly pay all contractors for work performed on the Shopping Center Property and shall promptly discharge any mechanic's liens filed against the Shopping Center Property. If the Owner of the Vacant Property fails to discharge a lien filed in connection with any of the easements granted to the Owner of the Vacant Property pursuant to this Declaration within thirty (30) days after the Owner of the Shopping Center Property receives notice thereof, the Owner of the Shopping Center Property may discharge or bond the same, and the Owner of the Shopping Center Property may recover its costs, with interest at the rate of twelve percent (12%) per annum, from the Owner of the Vacant Property as a result of discharging or bonding such lien.

9. **Notice and Restoration.** Not less than five (5) business days prior to the commencement of any construction or excavation permitted pursuant to this Declaration, the Owner of the Vacant Property shall provide written notice to the Owner of the Shopping Center Property of its intent to commence construction or excavation, which notice shall identify the construction to be performed, including the scope and nature thereof and the identity of the contractors performing such work, and the anticipated commencement and completion dates for such work. In exercising the rights granted pursuant to this Declaration, the Owner of the Vacant Property agrees that it shall use commercially reasonable efforts to avoid causing any damage to, or interference with, any improvements on the Easement Areas and to minimize any disruption or inconvenience to the Owner of the Shopping Center Property and any person who validly occupies the Shopping Center Property. All such



activity shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway. Owner of the Vacant Property covenants and agrees that after any construction work has been completed, Owner of the Vacant Property will, at Owner of the Vacant Property's sole cost and expense, shall promptly remove Owner of the Vacant Property's construction equipment and materials from the Easement Areas and will repair, replace, and restore the Easement Areas to substantially the condition of the Easement Areas prior to the commencement of the construction. The repair, replacement and restoration work includes, without limitation, the repair or replacement of any structures, driveways, fences, landscaping, utility lines or other improvements on the Easement Areas that were damaged, removed or destroyed by Owner of the Vacant Property during the construction and the restoration of the disturbed area.

10. **Mortgage Subordination.** Any mortgage or deed of trust affecting any portion of the Overall Property shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration.

11. **Use Restriction.** Declarant hereby covenants and agrees for the benefit of the Owner of the Shopping Center Property that, so long as the Shopping Center Property is operated as a retail facility, where not less than seventy percent (70%) of the gross leasable area is used for commercial and/or retail uses, the Vacant Property shall be developed and used solely for residential purposes and shall not be used for commercial and/or retail uses, except such uses that are ancillary to a residential project, such as a management office or newsstand.

12. **Recording.** At the expense of Declarant, this Declaration, together with all Exhibits, shall be recorded in the Office for the Recorder of Deeds of Montgomery County, Pennsylvania.

13. **Governing Law.** This Declaration shall be interpreted and enforced in accordance with the law of the Commonwealth of Pennsylvania.

14. **Notice.** Any notice, report or demand required, permitted or desired to be given under this Declaration shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is delivered (1) personally, or (2) by overnight carrier prepaid by the sender, or (3) mailed by registered or certified mail, return receipt requested, postage prepaid to the parties at the addresses as the respective parties may from time to time designate by like notice. Each such notice shall be effective upon being so delivered. Rejection or refusal to accept delivery or an inability to deliver because of change of address of which no notice was given shall all be deemed to be receipt of the notice or statement sent and the date of the rejection, refusal or inability to deliver shall be deemed to be the date notice was given.

15. **Severability.** If any term, condition or provision of this Declaration is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

16. **Headings.** The headings to paragraphs of this Declaration are for convenience only and shall not be used in interpreting this Declaration.

17. **Binding.** This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. **Obligation to Run With the Land.** The covenants and obligations of this Declaration shall be covenants running with the land, and the parties hereto agree for themselves and their successors and assigns that in any deed of conveyance of all or any portion thereof to any person, partnership, corporation, or other entity, the said covenants and obligations shall be incorporated therein by reference to this Declaration and the recording hereof as fully as if the same were contained therein.

-SIGNATURE PAGE FOLLOWS-

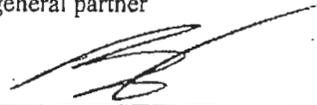


IN WITNESS WHEREOF, and intending to be legally bound hereby, the Declarant has caused this Declaration to be executed and sealed as of the day and year first above written.

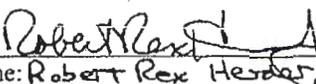
BAEDERWOOD LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Brandolini Baederwood LP,
its general partner

By: Brandolini Baederwood, Inc.,
its general partner

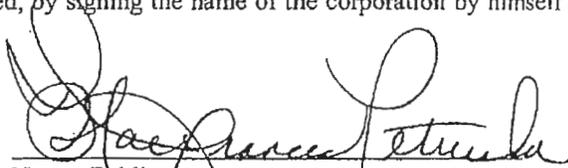
By: 
Name: Frederick Snow
Title: President

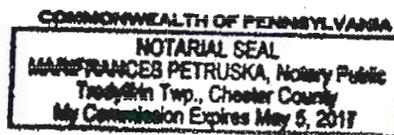
APPROVED BY THE TOWNSHIP OF ABINGTON

By: 
Name: Robert Rex Herder, Jr.
Title: Solicitor
Date: 6-25-2013

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF MONTGOMERY Chester : SS.

On this 25th day of June, 2013, before me, a notary public, personally appeared Frederick Snow who acknowledged himself/herself to be the President of Brandolini Baederwood, Inc., a Pennsylvania corporation, the general partner of Brandolini Baederwood LP, a Pennsylvania limited partnership, the general partner of Baederwood Limited Partnership, a Delaware limited partnership, and that he/she, as such President, and being authorized to do so, executed the foregoing Declaration for the purposes therein contained, by signing the name of the corporation by himself as such officer.


Notary Public
My commission expires:



COMMONWEALTH OF PENNSYLVANIA :
 : SS
 COUNTY OF MONTGOMERY :

On this 25 day of June, 2013, before me, a Notary Public, the undersigned officer, personally appeared **Robert Rex Herder, Jr.**, who acknowledged himself to be the **Solicitor for the Township of Abington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Megan Hayes

 Notary Public

NOTARIAL SEAL
 MEGAN HAYES
 Notary Public
 AMBLER BORO., MONTGOMERY COUNTY
 My Commission Expires Aug 14, 2016



Exhibit "A"
to Declaration
Legal Description of
Shopping Center Property

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE FAIRWAY (A.K.A. THE FAIRWAY VALLEY ROAD, 80 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN), AT ITS INTERSECTION WITH THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 40, BLOCK 177, LANDS NOW OR FORMERLY DONDEL ASSOCIATES, SAID POINT BEING THE FOLLOWING FOUR (4) COURSES AND DISTANCES FROM A POINT OF CURVATURE ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD (A.K.A. ROUTE 611, 100 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN):

- A. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, CONNECTING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 82 DEGREES 54 MINUTES 43 SECONDS, AN ARC LENGTH OF 130.23 FEET, A CHORD BEARING OF SOUTH 11 DEGREES 40 MINUTES 22 SECONDS EAST, AND A CHORD DISTANCE OF 119.16 FEET TO A POINT OF TANGENCY, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAYS:

- B. SOUTH 53 DEGREES 07 MINUTES 43 SECONDS EAST, A DISTANCE OF 397.32 FEET TO A POINT OF CURVATURE, THENCE;
- C. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, HAVING A RADIUS OF 290.00 FEET, A CENTRAL ANGLE OF 45 DEGREES 56 MINUTES 17 SECONDS, AN ARC LENGTH OF 232.51 FEET, A CHORD BEARING SOUTH 76 DEGREES 05 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 226.34 FEET TO A POINT OF TANGENCY, THENCE;
- D. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 608.82 FEET TO THE TRUE POINT AND PLACE OF BEGINNING AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;
1. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 40, BLOCK 177, NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 95.00 FEET TO A CONCRETE MONUMENT, THENCE;

01822771.1



THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, INC.:

2. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 13.83 FEET TO A RAILROAD SPIKE, THENCE;
3. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 390.45 FEET TO A POINT, THENCE;
4. ALONG THE COMMON DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND APN #30-00-66644-007, UNIT 33, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 34, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 645.93 FEET TO A MAG NAIL WITH WASHER, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66652-008, UNIT 39, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 34, BLOCK 177:

5. NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 7.04 FEET TO A RAILROAD SPIKE, THENCE;
6. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 166.00 FEET TO A CORNER, THENCE;
7. SOUTH 48 DEGREES 12 MINUTES 49 SECONDS EAST, A DISTANCE OF 524.85 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, THENCE;
8. ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, SOUTH 80 DEGREES 56 MINUTES 00 SECONDS WEST, A DISTANCE OF 1,400.88 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 455,023 SQUARE FEET OR 10.446 ACRES



Exhibit "B"

to Declaration

Legal Description of

Vacant Property

BEGINNING AT A COMMON CORNER POINT BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP; APN #30-00-66636-006, UNIT 1, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER, INC., SAID POINT BEING THE FOLLOWING SEVEN (7) COURSES AND DISTANCES FROM A POINT OF CURVATURE ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD (A.K.A. ROUTE 611, 100 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN):

- A. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, CONNECTING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 82 DEGREES 54 MINUTES 43 SECONDS, AN ARC LENGTH OF 130.23 FEET, A CHORD BEARING OF SOUTH 11 DEGREES 40 MINUTES 22 SECONDS EAST, AND A CHORD DISTANCE OF 119.16 FEET TO A POINT OF TANGENCY, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAYS:

- B. SOUTH 53 DEGREES 07 MINUTES 43 SECONDS EAST, A DISTANCE OF 397.32 FEET TO A POINT OF CURVATURE, THENCE;
- C. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, HAVING A RADIUS OF 290.00 FEET, A CENTRAL ANGLE OF 45 DEGREES 56 MINUTES 17 SECONDS, AN ARC LENGTH OF 232.51 FEET, A CHORD BEARING SOUTH 76 DEGREES 05 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 226.34 FEET TO A POINT OF TANGENCY, THENCE;
- D. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 608.82 FEET TO A POINT, THENCE;
- E. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 40, BLOCK 177, NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 95.00 FEET TO A CONCRETE MONUMENT, THENCE;

THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, INC.:

03847713



- F. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 13.83 FEET TO A RAILROAD SPIKE, THENCE;
- G. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 390.45 FEET TO THE TRUE POINT AND PLACE OF BEGINNING AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, L.P.:

1. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 44.92 FEET TO A POINT, THENCE;
2. NORTH 45 DEGREES 47 MINUTES 00 SECONDS WEST, A DISTANCE OF 785.56 FEET TO A POINT, THENCE;
3. ALONG THE COMMON DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND OPEN SPACE 'E', UNIT 78, BLOCK 177, UNIT 64, BLOCK 177; UNIT 63, BLOCK 177; UNIT 62, BLOCK 177; UNIT 61, BLOCK 177; UNIT 39, BLOCK 177; UNIT 38, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC.; NORTH 77 DEGREES 46 MINUTES 00 SECONDS EAST, A DISTANCE OF 520.60 FEET TO A CORNER, THENCE;
4. ALONG THE COMMON DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND UNIT 38, BLOCK 177; UNIT 37, BLOCK 177, UNIT 36, BLOCK 177, UNIT 35, BLOCK 177, UNIT 34, BLOCK 177, UNIT 33, BLOCK 177, UNIT 32, BLOCK 177, UNIT 31, BLOCK 177, OPEN SPACE 'B', LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., SOUTH 45 DEGREES 43 MINUTES 00 SECONDS EAST, A DISTANCE OF 792.82 FEET TO A CORNER, THENCE;
5. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND UNIT 34, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., SOUTH 09 DEGREES 04 MINUTES 00 SECONDS EAST, A DISTANCE OF 57.48 FEET TO A MAG NAIL WITH WASHER, THENCE;
6. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND APN #30-00-66636-006, UNIT 1, BLOCK 177, SOUTH 80 DEGREES 56 MINUTES 00 SECONDS WEST, A DISTANCE OF 551.45 FEET TO THE POINT AND PLACE OF BEGINNING.

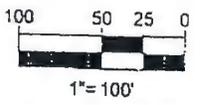
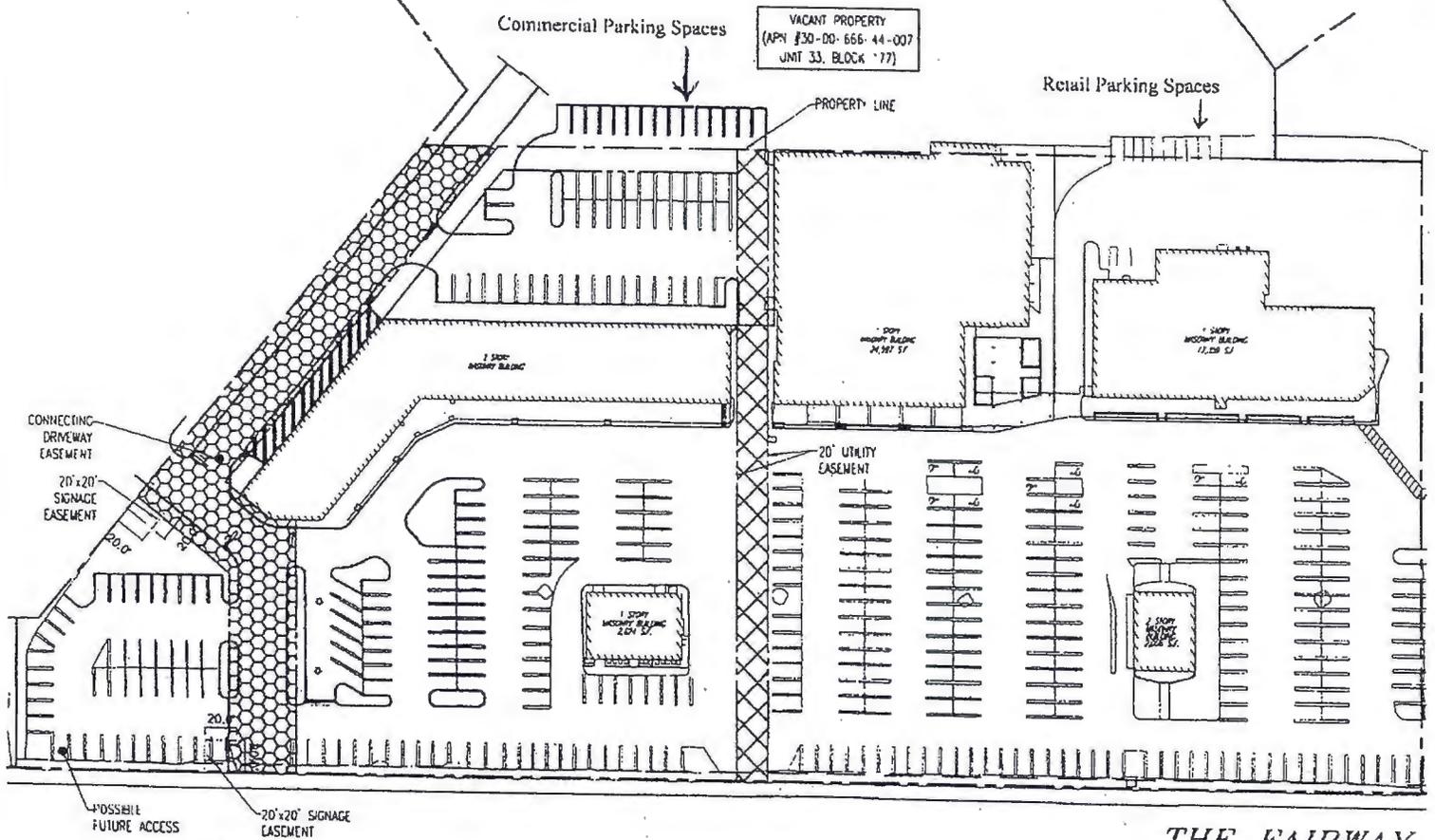
CONTAINING 366,895 SQUARE FEET OR 8.423 ACRES



Exhibit "C" to Declaration

Easement Plan





LEGEND

- UTILITY EASEMENT
- CONNECTING DRIVEWAY EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT

THE FAIRWAY
 (A.K.A. THE FAIRWAY VALLEY ROAD)
 (PUBLIC ROOMS)
 (107' X 62' 0")

BOHLER ENGINEERING
 1000 N. 10TH ST. SUITE 100
 MONTGOMERY, AL 36106
 (205) 833-1111
 www.bohler-engineering.com

NO.	DATE	DESCRIPTION
1	7/5/13	ISSUED FOR PERMIT

1" = 1" REFER TO "PLAN" FILE
 7/5/13

NOT APPROVED FOR CONSTRUCTION

REGISTERED PROFESSIONAL ENGINEER
 STATE OF ALABAMA
 THE FAIRWAY
 MONTGOMERY COUNTY, AL

LANDMANN
 1000 N. 10TH ST. SUITE 100
 MONTGOMERY, AL 36106
 (205) 833-1111

BOHLER ENGINEERING
 1000 N. 10TH ST. SUITE 100
 MONTGOMERY, AL 36106
 (205) 833-1111

A.S. BENOSKY
 1000 N. 10TH ST. SUITE 100
 MONTGOMERY, AL 36106
 (205) 833-1111

EASEMENT PLAN

1



Exhibit "D" to Declaration

Driveway Plan



Exhibit "E" to Declaration

Minimum Insurance Coverages

Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for any injury or death and not less than \$1,000,000 per occurrence for damage to the Shopping Center Property (including loss of use) and containing a cross liability provision

Commercial Automobile Liability insurance (including non-owned and hired liability) in the amount of not less than \$1,000,000 combined single limit,

Workers Compensation insurance with statutory limits for its activities on the Shopping Center Property and covering any accident arising in connection with the presence of the Owner of the Vacant Property, its contractors, agents and representatives on the Shopping Center Property

The Owner of the Vacant Property and its contractors, agents and representatives shall name the Owner of the Shopping Center Property and its management company as additional insureds with respect to the Commercial General Liability and Commercial Automobile Liability policies.

All policies provided by the Owner of the Vacant Property and its contractors, agents and representatives shall be primary and noncontributing with any other insurance available to the Owner of the Shopping Center Property.



Township of Abington
1176 Old York Road
Abington, Pa. 19001



Section 1108 of Ordinance #1753 {The Zoning Ordinance} contains the requirements for the submission, review procedures and the criteria for approval of a Conditional Use application within the Township of Abington. This form has been provided for your use. Please complete the entire form and submit the completed application with the required plan(s), reports(s) and application fee.

Name of Applicant: Baederwood Residential Partners, L.P.
BSC Jenkintown Limited Partnership

Address of Applicant: 1301 Lancaster Avenue, Berwyn, PA

Telephone Number: _____

E-Mail Address: _____

Name of Land Owner: Baederwood Residential Partners, L.P.

Address of Land Owner: 1301 Lancaster Avenue, Berwyn, PA

Telephone Number: _____

Submit proof of standing for the property involved in this application. A copy of the deed, agreement of sale or lease can be submitted. Please feel free to delete the financial terms of the sales agreement or lease.

Name of Attorney: Marc B. Kaplin, Esquire

Address of Attorney: 910 Harvest Drive
Blue Bell, PA 19422

Attorney's Phone Number: (610) 941-2666

Attorney's E-Mail Address: mkaplin@kaplaw.com

A written narrative may be submitted with this application that addresses the need for this application, an assessment of the property involved, the community character, safety related issues, traffic impact, storm water management and the effect on public utilities.

The undersigned herewith declares this submission to be true and correct as to the facts known as of the date of this application.

Signature of Applicant: Marc Kaplin
Marc B. Kaplin, Esquire, Attorney for Applicant and
Signature of Land Owner: _____ Land Owner

Section #3 of Ordinance #1951 of the Township of Abington contains the fee schedule for matters heard by the Board of Commissioners and include zoning change applications, map amendments, conditional use application, petitions and curative amendments.

A fee of \$2,000.00 is required to be submitted as the time the application is received. Checks are to be made payable to the Township of Abington and submitted to the Zoning Officer.

.....

Date Received: _____ Receipt Number: _____

Signature of Zoning Officer: _____

If there are any questions that you may have, please feel free to contact Mark Penecale @ 267-536-1017 or by e-mail at mpenecale@abington.org.

TOWNSHIP OF ABINGTON Plan Application Submission Checklist

The applicant is responsible for the submission of a complete application. This checklist will aid both the applicant and staff in ensuring that all applications are complete. The following is a per item submission checklist for all Subdivision, Land Development and Conditional Use Application for the Township of Abington.

- Application Form**: completed and signed by the owner/applicant
- Modification Form**: completed and signed. Requests for Waivers are to be made on this form only. All requirements can be found in the Land Development & Subdivision Ordinance.
- ^{Eight (8)} **12 Copies** of the proposed plan, folded to legal file size. Plans should be to a 20 scale and will not exceed a sheet of 24" x 36".
- The applicant will provide a **reduced copy** of the plan, no larger than 11" x 17".
- Two copies of DER Planning Modules**. Refer to Section 146.11.K
- Letter of Sewer Availability**: This is obtained from the Township Engineer.
- Letter of Water Availability**. This is obtained from Aqua PA
- ^{Eight} **Two sets of tentative Architectural Plans**. Required for all applications proposing construction or land development.
- Montgomery County Planning Commission Form**. Completed by this office.
- Check** made payable to Montgomery County Treasurer.
- Application Fee** - check made payable to the Township of Abington.
- Escrow Fee** - check made payable to the Township of Abington. Separate check.
- Copies of previous Zoning Hearing Board decisions.
- Recreation Facilities Plan**.

Application Received By: _____ Date Received: _____

Application Fee: _____ Escrow Fee: _____ Total Fee: _____

This application should be presented to the Planning & Zoning Officer. In the event that individual is not available please place this application on that person' desk and deposit all checks in the Code Enforcement Department's safe.

BEFORE THE BOARD OF COMMISSIONERS OF ABINGTON TOWNSHIP,
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF :
BAEDERWOOD RESIDENTIAL PARTNERS, :
L.P. and BSC JENKINTOWN LIMITED :
PARTNERSHIP FOR CONDITIONAL USE : No.
APPROVAL :

CONDITIONAL USE APPLICATION

Applicants Baederwood Residential Partners, L.P. (“BRP”) and BSC Jenkintown Limited Partnership (“BSC”), by their attorneys, Kaplin Stewart Meloff Reiter & Stein, P.C., submit this application for conditional use approval pursuant to Sections 325-504.D and 325-706.C(34) of the Abington Township Zoning Ordinance (“Zoning Ordinance”) to permit an apartment building to be located on a tract of land located within the Fairway Transit District (“FTD District”) as part of a Transit Oriented Development (“TOD”). In support thereof, BRP and BSC aver as follows:

1. BRP is the owner of 8.32 acres of an overall 18.88 acre tract of land located adjacent to Fairway Valley Road in Abington Township (“Site”) on which the Baederwood Shopping Center (“Shopping Center”) is located.

2. The Shopping Center is located on approximately 10.56 acres of the Site fronting on Fairway Valley Road (“Shopping Center Parcel”) and is owned by BSC.

3. Pursuant to the Abington Township Zoning Map, the entire Site is located in the FTD District.

4. The FTD District was created in 2010 pursuant to Ordinance No. 2000 as an amendment to the Zoning Ordinance (“FTD District Regulations”).

5. Pursuant to Section 504.1 of the FTD Regulations, the stated purpose of the FTD District is as follows:

Section 504.1 Purpose: The purpose of the Fairway Transit District is to implement recommendations of Abington Township's Comprehensive Plan. Specifically, the purpose of the FTD is to:

- A. Revitalize vacant and underutilized sites
- B. Capitalize on the area's proximity to SEPTA's regional rail system
- C. Establish a town center or main street environment in the southern part of the township with a mix of uses and building types
- D. Create a vibrant streetscape along the Fairway and adjacent areas with sidewalks, outdoor cafes, landscape amenities, and public plazas and open space
- E. Improve circulation for pedestrians, cyclists, and transit-users
- F. Enhance access to/from the Noble and Rydal train stations
- G. Provide more diverse housing opportunities
- H. Encourage quality design and innovative development
- I. Permit and integrate land uses in close proximity to each other in order to concentrate higher density residential uses along transit routes and provide for the daily recreational and shopping needs of the residents.

6. Pursuant to Section 504.3.D of the FTD District Regulations, a "transit oriented development" ("TOD") is a use permitted by conditional use on sites larger than one (1) acre.

7. Section 504.3.D of the FTD District Regulations define a TOD as follows:

Use C-34: Transit-Oriented Development (TOD): A building or buildings may be comprised of any mixture of office, commercial, residential, and community uses as defined herein. All buildings and all office, commercial, residential, and community service uses in a TOD shall comply with the design and dimensional standards as specified in the district regulations where the development is to be located. Design and dimensional standards provided in Section 706 for a particular use permitted within Use C-34 shall not apply.

8. Although the uses located on the Shopping Center Parcel are all permitted as part of a TOD under the FTD District Regulations, the Shopping Center was constructed long before

the enactment of the FTD Regulations and is legally nonconforming with regard to some of the dimensional requirements of the FTD District Regulations.

9. The rear 8.32 acres of the Site are undeveloped (“**Rear Parcel**”).

10. The term “site” is defined in the Zoning Ordinance as:

A lot or parcel, or contiguous lots or parcels of land defined by survey and intended to have one or more uses, or intended to be subdivided or developed.

11. Section 504.6 of the FTD District Regulations, which contain special development regulations, specifically states that:

P. In connection with the overall integrated development of the FTD, individual lots may be created for purposes of financing and/or conveyancing, without the need for subdivision/land development approval. *Such individual lots shall not be required to comply on an individual basis with the dimensional requirements of this ordinance, provided that (1) the overall development complies with such dimensional requirements; (2) the deeds conveying such separate lots contain covenants requiring the purchasers to, at all times, operate and maintain such lots in good order and repair and in a clean and sanitary condition; (3) cross-easements for parking areas and all appurtenant ways, pedestrian access, and utilities shall be created, recorded, and maintained between such lots; and (4) such cross-easements shall be subject to the approval of the township solicitor.* The purchaser of any such lot shall so covenant and agree thereby to be bound by such conditions as set forth herein. (emphasis supplied)

12. When the Shopping Center Parcel was conveyed to BSC, a Declaration of Easements was recorded which provides, in relevant part, that:

Background Paragraph E. The Properties are zoned Fairway Transit District (“**Zoning**”). The Zoning permits a mix of residential and commercial uses on the Properties. The Declarant intends, ultimately, to develop the Vacant Property as a multi-family residential project (“**Future Development**”) and desires to provide for access to and from the Vacant Property from and to Fairway Valley Road. Based on the Zoning, the development of the Vacant Property as a multi-family residential project may permit the expansion of the commercial development on the

Shopping Center Property. Declarant also desires to grant stormwater management, water, sanitary sewer and general utility easements over the Shopping Center Property for the benefit of the Vacant Property for the purpose of enabling the Future Development of the Vacant Property. Declarant also desires to grant an easement for the benefit of the Shopping Center Property to enable the owner of the Shopping Center Property to use, maintain, repair and restore that portion of one of the buildings currently located on the Shopping Center Property which encroaches onto the Vacant Property.

13. The Declaration of Easements provides for cross-easements for access, parking and utilities. Moreover the Declaration of Easements requires that each owner join with the other as a petitioner or applicant whenever required on any applications to obtain approvals and permits. A copy of that Declaration of Easements is attached hereto as **Exhibit "A"**.

14. The Township Solicitor reviewed and approved the Declaration of Easements on behalf of the Township prior to its recording, as evidenced by a June 11, 2013 letter from Rex Herder, Esquire ("**Herder Letter**"). A copy of the Herder letter is attached hereto as **Exhibit "B"**.

15. Therefore, pursuant to both the FTD District Regulations and the Declaration of Easements, the Shopping Center Parcel and the Rear Parcel are permitted to be considered as one "site" for purposes of development under the FTD District Regulations.

16. Pursuant to Section 706.C(34) of the FTD District Regulations, a TOD is permitted to include an apartment building (Use H-1).

17. BRP proposes to develop a 244 unit apartment building (Use H-1) on the Rear Parcel as part of the overall TOD (Use C-34) use of the Site ("**Proposed Apartment Development**"). A Site Plan depicting the Proposed Development on the Site is attached hereto as **Exhibit "C"**.

18. The Proposed Apartment Development furthers the stated purpose and intent of

the FTD District by:

- A. Revitalizing an underutilized site;
- B. Capitalizing on the area's proximity to SEPTA's regional rail system;
- C. Establishing a town center environment in the southern part of the township with a mix of uses and building types;
- D. Providing more diverse housing opportunities;
- E. Encouraging quality design and innovative development; and
- F. Integrating land uses in close proximity to each other in order to concentrate higher density residential uses along transit routes and provide for the daily recreational and shopping needs of the residents.

19. With the Proposed Apartment Development, the entire TOD Site satisfies the residential and non-residential mix requirements contained in Section 504.4 of the FTD District Regulations.

20. With the Proposed Apartment Development, the entire TOD Site satisfies the applicable dimensional regulations contained in Section 504.5 of the FTD District Regulations.

21. With the Proposed Apartment Development, the entire TOD Site satisfies the applicable special development regulations contained in Section 504.6 of the FTD District Regulations.

22. The Proposed Apartment Development qualifies for eight (8) bonus points allowing increased density up to 13 dwelling units per acre, as permitted by Section 504.7.B of the FTD District Regulations. Specifically, the Proposed Apartment Development:

- A. Will use decorative masonry for more than 50% of the proposed building facades (2 points);

B. Will use structured parking that provides at least 50% of the required parking for the Proposed Apartment Development and make at least 15% of the structured parking available to the public (2 points);

C. Will make off-site traffic improvements identified in the Comprehensive plan (3 points);

D. Will cover at least 50% of the total net roof area with a green roof (2 points);

E. Will use recycled rainwater systems or grey water collection systems for 35% of the building's stormwater (3 points).

23. While the Shopping Center Parcel is legally non-conforming with regard to the design standards set forth in Section 504.8 of the FTD Regulations, the Proposed Apartment Development complies with all applicable design standards contained in Section 504.8 of the FTD District Regulations., the Proposed Apartment Development.

24. For all the foregoing reasons, BRP and BSC respectfully request that the Board of Commissioners approve their Application for Conditional Use Approval to construct the Proposed Apartments on the Rear Parcel of the Site.

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: 

MARC B. KAPLIN, ESQUIRE
Attorneys for Applicants

EXHIBIT "A"



RECORDER OF DEEDS
MONTGOMERY COUNTY
Nancy J. Becker

One Montgomery Plaza
Swede and Airy Streets ~ Suite 303
P.O. Box 311 ~ Norristown, PA 19404
Office: (610) 278-3289 ~ Fax: (610) 278-3869

DEED BK 5879 PG 02264 to 02285
INSTRUMENT # : 2013072031
RECORDED DATE: 07/05/2013 03:49:54 PM



2947171-0008W

MONTGOMERY COUNTY ROD

OFFICIAL RECORDING COVER PAGE

Page 1 of 22

Document Type: Easement	Transaction #: 2912368 - 2 Doc(s)
Document Date: 06/25/2013	Document Page Count: 21
Reference Info:	Operator Id: dawhitner

RETURN TO: (Mail) STEWART TITLE GUARANTY CO 900 WEST VALLEY WAYNE, PA 19087	PAID BY: STEWART TITLE GUARANTY CO
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*** PROPERTY DATA:**

Parcel ID #: 30-00-66644-00-7	30-00-66652-00-8	30-00-66636-00-6
Address: 0 THE FAIRWAY	1575 THE FAIRWAY	1631 THE FAIRWAY
Municipality: PA Abington Township (100%)	PA Abington Township (0%)	PA Abington Township (0%)
School District: Abington	Abington	Abington

*** ASSOCIATED DOCUMENT(S):**

CONSIDERATION/SECURED AMT: \$0.00

FEES / TAXES:

Recording Fee:Easement	\$78.00
Additional Pages Fee	\$34.00
Additional Parcels Fee	\$20.00
Affordable Housing Pages	\$68.00
Affordable Housing Parcels	\$2.00
Rejected Document Fee	\$10.00
Total:	\$212.00

DEED BK 5879 PG 02264 to 02285
Recorded Date: 07/05/2013 03:49:54 PM

I hereby CERTIFY that
this document is
recorded in the
Recorder of Deeds
Office in Montgomery
County, Pennsylvania.



Nancy J. Becker

Nancy J. Becker
Recorder of Deeds

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.

*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

Certification signature by montgomery.county.rod@propertyinfo.com, Validity Unknown

Certified and Digitally Signed

Validation may require Adobe 'Windows Integration'

eCertified copy of recorded # 2013072031 (page 1 of 22)
Montgomery County Recorder of Deeds



DECLARATION OF EASEMENTS

RECORDER OF DEEDS
MONTGOMERY COUNTY

2013 JUL -1 AM 8:48

Prepared By:

Kaplin, Stewart, Meloff, Reiter & Stein, P.C.
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, Pennsylvania 19422
Attn: Simi Kaplin Baer, Esquire
Phone: (610) 941-2657
Fax: (610) 684-2126

RECORDER OF DEEDS
MONTGOMERY COUNTY
2013 JUL -5 AM 9:47

Please record and return to:

Kaplin, Stewart, Meloff, Reiter & Stein, P.C.
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, Pennsylvania 19422
Attn: Simi Kaplin Baer, Esquire
Phone: (610) 941-2657
Fax: (610) 684-2126

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
30-00-66644-00-7 ABINGTON
THE FAIRWAY
BAEDERWOOD LP \$10.00
B 177 U 033 L 2109 DATE: 07/05/2013 JO

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
30-00-66652-00-8 ABINGTON
1575 THE FAIRWAY
BAEDERWOOD LP \$10.00
B 177 U 039 L 4293 DATE: 07/05/2013 JO

Parcel Numbers: 30-00-66636-006
30-00-66652-008
30-00-66644-007
Abington Township, Montgomery County, Pennsylvania

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
30-00-66636-00-6 ABINGTON
1631 THE FAIRWAY
BAEDERWOOD LP \$10.00
B 177 U 001 L 4546 DATE: 07/05/2013 JO

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (hereinafter referred to as the "Declaration") is made this 25th day of June, 2013 by BAEDERWOOD LIMITED PARTNERSHIP, a Delaware limited partnership (the "Declarant"), for itself, its successors and assigns.

BACKGROUND

A. Declarant is the record owner of certain real properties known as Tax Parcel #30-00-66636-006 with an address of 1631 Fairway Valley Road, Abington Township, Montgomery County, Pennsylvania and Tax Parcel #30-00-66652-008, 1575 Fairway Valley Road, Abington Township, Montgomery County, Pennsylvania, each of which is more fully described on Exhibit "A" attached hereto and made a part hereof (collectively, and together with the buildings and improvements constructed thereon and all easements, rights and appurtenances belonging thereto, the "Shopping Center Property"). The Shopping Center Property consists of approximately ten and one half (10.5) acres in the aggregate.

B. The Shopping Center Property is currently improved with a combination of retail and office buildings, including a strip center with second story offices, and a stand-alone supermarket, as well as associated parking, drive aisles and entrance facilities which connect to Fairway Valley Road.



C. Declarant is also the record owner of certain property known as **Tax Parcel #30-00-66644-007**, which property does not have a street address, but is adjacent to the north side of the Shopping Center Property ("**Vacant Property**"). The Vacant Property consists of approximately eight and forty two one hundredths (8.42) acres and is more fully described on Exhibit "B" attached hereto and made a part hereof.

D. The Shopping Center Property and the Vacant Property are sometimes hereinafter collectively referred to as the "**Properties**." Each owner of the Properties may be referred to hereinafter as an "**Owner**" and, collectively, as the "**Owners**."

E. The Properties are zoned Fairway Transit District ("**Zoning**"). The Zoning permits a mix of residential and commercial uses on the Properties. The Declarant intends, ultimately, to develop the Vacant Property as a multi-family residential project ("**Future Development**") and desires to provide for access to and from the Vacant Property from and to Fairway Valley Road. Based on the Zoning, the development of the Vacant Property as a multi-family residential project may permit the expansion of the commercial development on the Shopping Center Property. Declarant also desires to grant stormwater management, water, sanitary sewer and general utility easements over the Shopping Center Property for the benefit of the Vacant Property for the purpose of enabling the Future Development of the Vacant Property. Declarant also desires to grant an easement for the benefit of the Shopping Center Property to enable the owner of the Shopping Center Property to use, maintain, repair and restore that portion of one of the buildings currently located on the Shopping Center Property which encroaches onto the Vacant Property.

F. The Declarant desires to confirm the obligation of the Owners to develop and redevelop the Properties in accordance with the requirements of the Zoning.

G. Attached hereto and made a part hereof as Exhibit "C" is a plan entitled Easement Plan, prepared by Bohler Engineering, Inc., dated April 3, 2013 ("**Easement Plan**").

H. Attached hereto and made a part hereof as Exhibit "D" is a plan entitled Driveway Plan, prepared by Bohler Engineering, Inc., dated April 3, 2013 ("**Driveway Plan**").

NOW, THEREFORE, in consideration of the covenants, easements, conditions, and restrictions set forth herein, the Declarant, intending to be legally bound, hereby declares as follows:

1. Background. The Background of this Declaration and all exhibits attached hereto are fully incorporated herein and shall form a part of this Declaration.

2. Submission to the Declaration. To accomplish the ends set forth in the Background of this Declaration, Declarant hereby submits the Properties to the terms, conditions and provisions of this Declaration and hereby declares the Properties shall be held, sold and conveyed subject to the covenants, easements, conditions, and restrictions contained herein, which are for the purpose of protecting the value and desirability of the Properties and which shall run with the Properties subjected to this Declaration and which shall be binding on, and inure to the benefit of, all parties having any right, title or interest therein or any part thereof, their heirs, successors, successor-in-title and assigns.

3. Applicability. This Declaration shall be applicable to the Properties. All present and future record Owners, occupants and/or tenants of either of the Properties, their guests, licensees, servants, agents, employees or any other person(s) or legal entity who shall be permitted to use the Properties shall be subject to this Declaration.

4. Grant of Easements.

(a) Temporary Construction Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, the right, at such time as is required or



convenient for the construction of the Future Development, a temporary construction easement to construct the pathway which connects the Vacant Property to Fairway Valley Road ("Connecting Driveway") over the portion of the Shopping Center Property as approximately depicted on the Driveway Plan ("Connecting Driveway Easement Area"). The Owner of the Vacant Property, at its sole cost and expense, shall be permitted to construct the Connecting Driveway and all appurtenances and improvements associated therewith in the general location set forth on the Driveway Plan and in all cases within the Connecting Driveway Easement Area, provided that: (i) such use is kept within the reasonable requirements of construction work expeditiously pursued, (ii) such construction activity shall not unreasonably interfere with construction or the conduct or operation of any business on the Shopping Center Property, (iii) customary liability and property damage insurance is maintained protecting the Owner of the Shopping Center Property from the risk involved in connection therewith, which, at a minimum, shall include the coverages set forth on Exhibit "E" attached hereto and made a part hereof, (iv) upon the completion of any work on the Shopping Center Property, the Owner of the Vacant Property shall promptly, at its own cost and expense, repair and/or restore any damage done and all areas disturbed and leave such areas free and clear of trash, rubbish, loose dirt and construction materials and restore all such areas to their original grade and substantially to the condition as existed prior to such work being done (except as shown on the Easement Plan or as necessary to construct the Connecting Driveway), (v) the construction performed is authorized by the applicable governing agency and is performed in a good and workmanlike manner, lien free and in compliance with all governmental requirements, (vi) the work does not unreasonably and materially interfere with the use, occupancy or enjoyment of any part of the Shopping Center Property, (vii) the construction and other activity conducted by the Owner of the Vacant Property does not violate the terms of, or result in the landlord being in default under, any lease in effect at the Shopping Center Property or entitle any tenant of the Shopping Center Property to terminate its lease or abate or reduce the rent payable thereunder, (viii) the construction and other activity conducted by the Owner of the Vacant Property does not violate the terms of any permit or approval issued with respect to the Shopping Center Property, and (ix) the Owner of the Vacant Property shall have given the Owner of the Shopping Center not less than forty eight (48) hours' notice of its intent to enter on the Shopping Center Property for any purpose (the foregoing, collectively, the "Entry and Activity Conditions").

(b) Access Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property, for the benefit and use of the Vacant Property or any portion thereof, a perpetual non-exclusive right and easement over the Connecting Driveway ("Connecting Driveway Easement Area") to provide pedestrian and vehicular access, ingress and egress between Fairway Valley Road and the Vacant Property, as well as the right to install and maintain a sign for the Future Development at the intersection of the Connecting Driveway and Fairway Valley Road in approximately the location depicted on the Easement Plan ("F.D. Sign"), provided the same does not reduce or restrict or adversely affect the signage which the Owner of the Shopping Center Property would otherwise be entitled to erect, now or hereafter, on the Shopping Center Property. The Owner of the Vacant Property shall be required, at its sole cost and expense, to obtain all permits and approvals necessary to construct the F.D. Sign, and, further shall be responsible, at its sole cost and expense to install, repair, maintain and replace, as necessary, the F. D. Sign and associated landscaping, all of which shall be kept and maintained by the Owner of the Vacant Property, at its sole cost and expense, in good and safe condition and consistent with the standards of a first class shopping center. The Owner of the Shopping Center Property shall not place or construct any structure or object on the Connecting Driveway which would materially impair the free flow of vehicular or pedestrian traffic over the Connecting Driveway or inhibit access over the Connecting Driveway from and to the Vacant Property to and from Fairway Valley Road. Except as may be required by any governmental entity, the Owner of the Shopping Center Property shall not modify or relocate the curb cuts/access from the Shopping Center Property to Fairway Valley Road without the written consent of the Owner of the Vacant Property, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) Connecting Driveway Maintenance Easement. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Connecting Driveway, including, but not limited to the prompt removal of snow and ice, consistent with maintenance of a first class shopping center. Notwithstanding the foregoing, in the event that the Owner of the Shopping Center Property fails to maintain, repair or replace the Connecting Driveway in accordance with this



Section 4(c) after written notice from the Owner of the Vacant Property of, and specifying the nature of, such failure, Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property or any portion thereof the perpetual, nonexclusive right and easement to enter upon the Shopping Center Property to maintain, repair and/or replace the Connecting Driveway, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(c) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway, provided that in the case of an emergency requiring immediate action by the Owner if the Vacant Property prior notice of intent to enter shall not be required if it cannot reasonably be given so long as notice of entry is given as soon as reasonably practical.. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, one hundred percent (100%) of the costs to maintain, repair and/or replace the Connecting Driveway All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(c), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(d) Storm Water Easement. The Declarant acknowledges that the Owner of the Vacant Property intends to construct storm water management facilities on the Vacant Property to manage the storm water on the Vacant Property and shall be responsible to obtain all necessary permits and approval to do so prior to the construction of the Future Development. However, in addition to that, Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, the perpetual, nonexclusive right and easement to enter onto the Shopping Center Property to excavate, tie into and use the storm water drainage system located on the Shopping Center Property including any detention or retention basin ("Storm Water System"), that is located within the area depicted on the Easement Plan as the 20' Utility Easement ("Utility Easement Area") or the Connecting Driveway Easement Area and to install, maintain, repair and replace additional storm sewer lines serving the Vacant Property within the Utility Easement Area or the Connecting Driveway Easement Area, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(d) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway and no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with storm water management at the Shopping Center or damage the storm water lines and facilities serving the Shopping Center. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Storm Water System (which for purposes of this Section 4(d) shall not be construed to include any storm sewer lines or facilities exclusively serving the Vacant Property, 100% of the costs of which shall be paid by the Owner of the Vacant Property) consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Storm Water System shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the building located on the Shopping Center Property and the Vacant Property, respectively. Any alteration in the natural water flow which may occur as a natural consequence of normal construction and operation of the Future Development shall be permitted. Notwithstanding the foregoing, however, if it is determined by an applicable governmental authority that the Future Development will or does produce more cubic feet of water per second than the Storm Water System is designed to handle/convey, the Owner of the Vacant Property, at its sole cost and expense, shall make the modifications necessary to support the increased storm water flow into the Existing Storm Water System. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Storm Water System. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(d), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including



reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(e) Water Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, nonexclusive right and easement to enter on to the Shopping Center Property to excavate and tie into the water lines that are located within the Utility Easement Area (the "Existing Water Lines") or to install, maintain, repair and replace additional water lines serving the Vacant Property within the Utility Easement Area or the Connecting Driveway Easement Area, as well as the right to use all water services facilities, including pipes, lines, meters, mains, laterals and other water facilities located on the Shopping Center Property to provide water service to the Vacant Property, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(e) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway and no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with water service to the Shopping Center or damage the water lines and facilities serving the Shopping Center. The Owner of the Vacant Property shall, at its sole cost and expense, cause all water use by the Vacant Property to be separately metered and shall be responsible for payment of all water use by the Vacant Property directly to the applicable utility. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Existing Water Lines consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Existing Water Lines shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Existing Water Lines. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(e), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(f) Sanitary Sewer Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, nonexclusive right and easement to enter in to the Shopping Center Property to excavate and to connect the Vacant Property to the sanitary sewer system serving the Shopping Center Property within the Utility Easement Area (the "Existing Sanitary Sewer System") or to install, maintain, repair and replace additional sewer lines serving the Vacant Property within the Utility Easement Area or the Connecting Driveway Easement Area, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(f) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Existing Sanitary Sewer System consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Existing Sanitary Sewer System shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Existing Sanitary Sewer System. All amounts invoiced by the Owner of the Shopping Center



pursuant to this Section 4(f), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, nonexclusive easement to use the sanitary sewer system located on the Shopping Center Property, including pipes, laterals, mains, manholes and other facilities and appurtenances thereto and other sanitary sewer facilities for the conveying and processing of effluent derived from the Vacant Property, provided that no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with sanitary sewer service to the Shopping Center or damage the sewer lines and facilities serving the Shopping Center. Declarant acknowledges, and by its acceptance of the easement granted under this Section 4(f) the Owner of the Vacant Property agrees, that the Owner of the Vacant Property shall be responsible to purchase sewer capacity for the Future Development at its sole cost and expense from the applicable municipal authority.

(g) General Utility Easement. Declarant hereby grants and conveys to the Owner of the Vacant Property for the benefit of the Vacant Property, or any portion thereof, a perpetual, non-exclusive right and easement to enter upon the Shopping Center Property to connect to the electric, gas, cable, fiber optic and similar utility lines (collectively, the "Utility Facilities") located within the Utility Easement Area (the "Existing Utility Facilities") or to install, maintain repair and replace additional Utility Facilities within the Utility Easement Area or the Connecting Driveway Easement Area, together with the perpetual right and non-exclusive easement to obtain the services provided by the Utility Facilities and any replacements thereof and additions thereto through the Utility Facilities, provided that any such entry and all activity by the Owner of the Vacant Property on the Shopping Center Property pursuant to this Section 4(g) shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway and no such installation, maintenance, repair, replacement or usage shall interrupt or interfere with utility service to the Shopping Center or damage the Utility Facilities serving the Shopping Center. The Owner of the Shopping Center Property shall maintain, repair and replace, as it determines in its reasonable discretion is necessary, the Existing Utility Facilities consistent with maintenance of a first class shopping center. All costs of maintenance, repair and replacement of the Existing Utility Facilities shall be shared by the Owner of the Shopping Center Property and the Owner of the Vacant Property, upon connection thereto, pro rata, in proportion to the rentable square footage of the buildings located on the Shopping Center Property and the Vacant Property, respectively. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, its pro rata share of the costs to maintain, repair and/or replace the Existing Utility Facilities. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(g), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(h) No Obstruction. The Connecting Driveway Easement Area and the Utility Easement Area shall be referred to herein collectively as the ("Easement Areas"). The Owner of the Vacant Property acknowledges that, other than on the Connecting Driveway Easement Area, certain buildings and other improvements ("Improvements") have previously been constructed on the Shopping Center Property and such existing improvements may encroach upon portions the Easement Areas. Owner of the Vacant Property



consents to any such encroachments of the Improvements onto the Easement Areas existing as of the date hereof, and to any replacement of such Improvements in accordance with this Declaration, and agrees to reasonably restore any damage Owner of the Vacant Property causes to such Improvements in the exercise of the rights and privileges granted under this Easement Agreement. Provided, however, that the Declarant does hereby covenant that after the date of this Declaration, no structure or other obstruction (including trees and vegetation) other than as a replacement for an existing Improvement, shall be erected or installed on or in the Easement Areas which in the reasonable opinion of the Owner of the Vacant Property may interfere with the Owner of the Vacant Property's exercise of the rights and privileges granted hereunder (collectively the "**Prohibited Obstructions**"). Notwithstanding anything else in this Easement Agreement to the contrary, the Owner of the Vacant Property, in the exercise of the rights and privileges granted hereunder, shall not be responsible for any damage to any Prohibited Obstructions after the date of this Declaration.

(i) Noninterference. Owner of the Vacant Property shall use all reasonable means to avoid inconvenience to Declarant and the Owner of the Shopping Center Property, including any interruption in any utility service to the Shopping Center Property, or damage or injury to the Shopping Center Property during the course of any entry and the conduct of any work permitted under this Declaration. Without limiting the foregoing, the Owner of the Vacant Property shall maintain a minimum of two drive aisles across the Easement Areas at all times that it is engaged in any activity thereon. After any entry on to the Shopping Center Property, Owner of the Vacant Property shall restore, at its sole cost, the Shopping Center Property to its prior condition and generally leave the area in good condition. All lines and facilities installed on the Shopping Center Property by the Owner of the Vacant Property shall be properly maintained and repaired and kept in good working order, and upon any cessation of use shall be properly tied off, capped and closed out, by the Owner of the Vacant Property at its sole cost and expense. The Owner of the Vacant Property shall not permit any liens to be filed against the Shopping Center Property in connection with any work done on the Shopping Center Property by or for the account of the Owner of the Vacant Property, and if any such liens are filed the Owner of the Vacant Property shall cause the same to be removed of record within thirty (30) days of filing, failing which the Owner of the Shopping Center Property may cause the same to be removed of record, by payment or posting of a bond, and all costs and expenses incurred by the Owner of the Shopping Center Property in connection therewith shall be immediately due and payable by the Owner of the Vacant Property. In the event the Owner of the Vacant Property fails to do the same on demand, all amounts owed to the Owner of the Shopping Center Property pursuant to this Section 4(i), together with interest from the date of demand at the rate of twelve percent (12%) per annum, compounded monthly, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time of demand. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center Property in the same manner as any mortgage or deed of trust encumbering the Vacant Property.

(j) Parking Easements. The Easement Plan depicts fifteen (15) parking spaces located on the Vacant Property which serve the Shopping Center Property ("**Commercial Parking Spaces**"), said Commercial Parking Spaces being labeled as such on the Easement Plan. The Easement Plan also depicts ten (10) parking spaces which serve the Shopping Center Property as encroaching on the Vacant Property ("**Retail Parking Spaces**"), said Retail Parking Spaces being labeled as such on the Easement Plan, and the area of the Vacant Property on which such Retail Parking Spaces, together with paved access thereto, are located being referred to herein as the "**Parking Encroachment Area**". The Declarant hereby grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property, or any portion thereof, and said owner's tenants and invitees, a perpetual, exclusive right and easement to enter upon the Vacant Property, and to use all roads and drives now or hereafter located on the Vacant Property, for the purpose of access to and from the Commercial Parking Spaces and the right to use the Commercial Parking Spaces for parking vehicles and placing and using (including depositing trash in and emptying) one or more dumpsters, and to maintain and repair the Commercial Parking Spaces, during the hours that businesses on the Shopping Center Property are open and for no other use. The Owner of the Vacant Property shall have the right, at its sole cost and expense to screen any dumpsters placed in the Commercial Parking Area (hereafter defined)



provided such screening does not unreasonably interfere with the use of such dumpsters by the Owner of the Shopping Center Property and such screening is maintained by the Owner of the Vacant Property, at its sole cost and expense, in good and safe condition and consistent with the standards of a first class shopping center. The Declarant hereby further grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property, or any portion thereof, and said owner's tenants and invitees, a perpetual, exclusive right and easement to enter upon the and use the Parking Encroachment Area for parking vehicles, and to maintain and repair the Retail Parking Spaces, during the hours that businesses on the Shopping Center Property are open and for no other use. No structure or other obstruction (including trees and vegetation), shall be erected or installed on or within the area of the Vacant Property on which the Commercial Parking Spaces (the "Commercial Parking Area") are located or the Parking Encroachment Area, or in any other areas on the Vacant Property providing access to the Commercial Parking Area or the Parking Encroachment Area, which in the reasonable opinion of the Owner of the Shopping Center Property may interfere with the Owner of the Shopping Center Property's exercise of the rights and privileges granted hereunder.

(k) Encroachment Easement. The Easement Plan depicts an encroachment onto the Vacant Property by a portion of one of the buildings currently located on the Shopping Center Property (the "Building Encroachment"), the area of the Vacant Property on which the Building Encroachment is located being referred to herein as the "Building Encroachment Area". The Declarant hereby confirms that the Building Encroachment is among the "Encroachments" described in that certain Deed of Easement between Dondel Associates, as Grantor, and Dondel Associates, as Grantee, dated August 23, 1989 and recorded in Deed Book 4921, Page 1011 of the Montgomery County Recorder's Office (the "Deed of Easement"). The Declarant acknowledges that certain utility lines and facilities are also located with the area of the Vacant Property described on Exhibit "D" to the Deed of Easement (the "Existing Easement Area") and that the Owner of the Shopping Center Property has, and the Declarant hereby grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property, or any portion thereof, the perpetual right and easement to continue the Building Encroachment and to use, maintain, repair, replace and restore, the Building Encroachment and other Encroachments (as defined in the Deed of Easement) and the utility lines and facilities located in the Existing Easement Area and to enter upon the Existing Easement Area for the purpose of maintaining, repairing, restoring and replacing the improvements and utility lines and facilities located within the Existing Easement Area and to use all roads and drives now or hereafter located on the Vacant Property (or in the absence thereof the unimproved surface of the Vacant Property) for the purpose of access to and from the Existing Easement Area. No structure or other obstruction (including trees and vegetation), shall be erected or installed on or within the Existing Easement Area, or in any other areas on the Vacant Property providing access to the Existing Easement Area, which in the reasonable opinion of the Owner of the Shopping Center Property may interfere with the Owner of the Shopping Center Property's exercise of the rights and privileges granted hereunder. The Owner of the Vacant Property shall, at its sole cost and expense, maintain the Existing Easement Area in a neat and clean condition, including seeding, fertilizing and regularly mowing all lawn areas and keeping all landscaping in good and attractive condition. If the Owner of the Vacant Property fails to install maintain the Existing Easement Area in accordance with this Section 4(k) after written notice from the Owner of the Shopping Center Property of, and specifying the nature of, such failure, Declarant hereby grants and conveys to the Owner of the Shopping Center Property for the benefit of the Shopping Center Property or any portion thereof the perpetual, nonexclusive right and easement to enter upon the Existing Easement Area to maintain the Existing Easement Area. The owner of the Shopping Center Property shall invoice the Owner of the Vacant Property for, and the Owner of the Vacant Property shall be responsible for payment of, one hundred percent (100%) of the costs to maintain the Existing Easement Area. All amounts invoiced by the Owner of the Shopping Center pursuant to this Section 4(k), together with interest at the rate of twelve percent (12%) per annum, compounded monthly, on all amounts not paid within thirty (30) days of being invoiced, and all costs of collection, including reasonable attorneys' fees, shall be a charge and continuing lien upon the Vacant Property as well as the personal obligation of the Owner of the Vacant Property at the time invoiced. All such liens shall be prior to all other liens and encumbrances except (i) the lien for unpaid real estate taxes, and (ii) liens and encumbrances of record at the time of recordation of this Declaration, and may be foreclosed by the Owner of the Shopping Center in the same manner as any mortgage or deed of trust encumbering the Vacant Property.



5. **Zoning.** Notwithstanding the fact that the Township may consider the Properties as a single tract, each Owner shall be required to independently maintain on its Property the requisite number of parking spaces that would be required by the Zoning, if each of the Properties was analyzed independent from the other. To the extent required by the Township or other applicable governmental authority each Owner shall join with the other as a petitioner or applicant whenever required on any applications to obtain approvals and permits, provided that the non-applicant party shall not be obligated to incur any costs, expenses or monetary obligation in connection therewith. Notwithstanding any other provision of this Declaration, all rights and easements granted to the Owner of the Vacant Property shall be exercised, used and enjoyed in such manner and only to the extent that the same do not limit or in any manner restrict any future development, including expansion, of the Shopping Center Property that would otherwise be permitted but for the easements (excluding the Connecting Driveway Easement) granted in this Declaration. If at any time the Owner of the Shopping Center Property proposes to further develop the Shopping Center Property or any portion thereof for non-residential purposes, or expand any improvements now or hereafter existing on the Shopping Center Property, and such non-residential development or expansion is prohibited or restricted as a result of any use of the Shopping Center Property, including, without limitation, the Storm Water System, the water lines and facilities, the sanitary sewer system and the Utility Facilities, by the Owner of the Vacant Property, but excluding the Connecting Driveway Easement, even though permitted under this Declaration, the use of the Shopping Center Property by the Owner of the Vacant Property shall thereafter be limited to such uses as may be made without adversely affecting any such proposed non-residential development or expansion of the Shopping Center Property.

6. **Insurance.** In addition to the insurance required to be maintained by the Owner of the Vacant Property pursuant to Section 4(a), the Owners of each of the Properties shall maintain liability insurance on their respective Properties, naming the other as additional insured, which insures against bodily injury and death and property damage that arises out of or is caused by the use or entry upon the other party's property. Upon the request of the other, each party shall provide evidence to the other that the insurance required herein is in full force and effect. All insurance shall be written on an "occurrence" basis with a financially responsible company licensed to issue such insurance in the Commonwealth of Pennsylvania.

7. **Indemnification.** Each party shall indemnify, defend and hold the other party harmless from any liability, cost or expense incurred by the indemnified party by reason of injury to persons or damage to property arising out of or in connection with the indemnifying party's use or entry upon the Properties under this Declaration, including any liability to tenants, except for such cost or expense caused by the negligence of the indemnified party, its agents, employees or independent contractors.

8. **No Liens.** The Owner of the Vacant Property shall promptly pay all contractors for work performed on the Shopping Center Property and shall promptly discharge any mechanic's liens filed against the Shopping Center Property. If the Owner of the Vacant Property fails to discharge a lien filed in connection with any of the easements granted to the Owner of the Vacant Property pursuant to this Declaration within thirty (30) days after the Owner of the Shopping Center Property receives notice thereof, the Owner of the Shopping Center Property may discharge or bond the same, and the Owner of the Shopping Center Property may recover its costs, with interest at the rate of twelve percent (12%) per annum, from the Owner of the Vacant Property as a result of discharging or bonding such lien.

9. **Notice and Restoration.** Not less than five (5) business days prior to the commencement of any construction or excavation permitted pursuant to this Declaration, the Owner of the Vacant Property shall provide written notice to the Owner of the Shopping Center Property of its intent to commence construction or excavation, which notice shall identify the construction to be performed, including the scope and nature thereof and the identity of the contractors performing such work, and the anticipated commencement and completion dates for such work. In exercising the rights granted pursuant to this Declaration, the Owner of the Vacant Property agrees that it shall use commercially reasonable efforts to avoid causing any damage to, or interference with, any improvements on the Easement Areas and to minimize any disruption or inconvenience to the Owner of the Shopping Center Property and any person who validly occupies the Shopping Center Property. All such



activity shall be subject to the Entry and Activity Conditions set forth in Section 4(a) with respect to the initial construction of the Connecting Driveway. Owner of the Vacant Property covenants and agrees that after any construction work has been completed, Owner of the Vacant Property will, at Owner of the Vacant Property's sole cost and expense, shall promptly remove Owner of the Vacant Property's construction equipment and materials from the Easement Areas and will repair, replace, and restore the Easement Areas to substantially the condition of the Easement Areas prior to the commencement of the construction. The repair, replacement and restoration work includes, without limitation, the repair or replacement of any structures, driveways, fences, landscaping, utility lines or other improvements on the Easement Areas that were damaged, removed or destroyed by Owner of the Vacant Property during the construction and the restoration of the disturbed area.

10. **Mortgage Subordination.** Any mortgage or deed of trust affecting any portion of the Overall Property shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Declaration.

11. **Use Restriction.** Declarant hereby covenants and agrees for the benefit of the Owner of the Shopping Center Property that, so long as the Shopping Center Property is operated as a retail facility, where not less than seventy percent (70%) of the gross leasable area is used for commercial and/or retail uses, the Vacant Property shall be developed and used solely for residential purposes and shall not be used for commercial and/or retail uses, except such uses that are ancillary to a residential project, such as a management office or newsstand.

12. **Recording.** At the expense of Declarant, this Declaration, together with all Exhibits, shall be recorded in the Office for the Recorder of Deeds of Montgomery County, Pennsylvania.

13. **Governing Law.** This Declaration shall be interpreted and enforced in accordance with the law of the Commonwealth of Pennsylvania.

14. **Notice.** Any notice, report or demand required, permitted or desired to be given under this Declaration shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is delivered (1) personally, or (2) by overnight carrier prepaid by the sender, or (3) mailed by registered or certified mail, return receipt requested, postage prepaid to the parties at the addresses as the respective parties may from time to time designate by like notice. Each such notice shall be effective upon being so delivered. Rejection or refusal to accept delivery or an inability to deliver because of change of address of which no notice was given shall all be deemed to be receipt of the notice or statement sent and the date of the rejection, refusal or inability to deliver shall be deemed to be the date notice was given.

15. **Severability.** If any term, condition or provision of this Declaration is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

16. **Headings.** The headings to paragraphs of this Declaration are for convenience only and shall not be used in interpreting this Declaration.

17. **Binding.** This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. **Obligation to Run With the Land.** The covenants and obligations of this Declaration shall be covenants running with the land, and the parties hereto agree for themselves and their successors and assigns that in any deed of conveyance of all or any portion thereof to any person, partnership, corporation, or other entity, the said covenants and obligations shall be incorporated therein by reference to this Declaration and the recording hereof as fully as if the same were contained therein.

-SIGNATURE PAGE FOLLOWS-



COMMONWEALTH OF PENNSYLVANIA :
 :
 COUNTY OF MONTGOMERY : *SS*
 :

On this 25 day of June, 2013, before me, a Notary Public, the undersigned officer, personally appeared **Robert Rex Herder, Jr.**, who acknowledged himself to be the **Solicitor for the Township of Abington**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Megan Hayes

 Notary Public

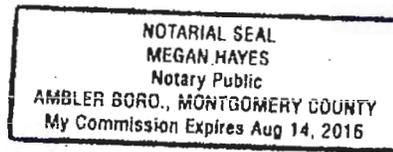


Exhibit "A"
to Declaration
Legal Description of
Shopping Center Property

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE FAIRWAY (A.K.A. THE FAIRWAY VALLEY ROAD, 80 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN), AT ITS INTERSECTION WITH THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 40, BLOCK 177, LANDS NOW OR FORMERLY DONDEL ASSOCIATES, SAID POINT BEING THE FOLLOWING FOUR (4) COURSES AND DISTANCES FROM A POINT OF CURVATURE ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD (A.K.A. ROUTE 611, 100 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN):

- A. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, CONNECTING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 82 DEGREES 54 MINUTES 43 SECONDS, AN ARC LENGTH OF 130.23 FEET, A CHORD BEARING OF SOUTH 11 DEGREES 40 MINUTES 22 SECONDS EAST, AND A CHORD DISTANCE OF 119.16 FEET TO A POINT OF TANGENCY, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAYS:

- B. SOUTH 53 DEGREES 07 MINUTES 43 SECONDS EAST, A DISTANCE OF 397.32 FEET TO A POINT OF CURVATURE, THENCE;
- C. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, HAVING A RADIUS OF 290.00 FEET, A CENTRAL ANGLE OF 45 DEGREES 56 MINUTES 17 SECONDS, AN ARC LENGTH OF 232.51 FEET, A CHORD BEARING SOUTH 76 DEGREES 05 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 226.34 FEET TO A POINT OF TANGENCY, THENCE;
- D. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 608.82 FEET TO THE TRUE POINT AND PLACE OF BEGINNING AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;
- I. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 40, BLOCK 177, NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 95.00 FEET TO A CONCRETE MONUMENT, THENCE;

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THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, INC.:

2. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 13.83 FEET TO A RAILROAD SPIKE, THENCE;
3. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 390.45 FEET TO A POINT, THENCE;
4. ALONG THE COMMON DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND APN #30-00-66644-007, UNIT 33, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 34, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 645.93 FEET TO A MAG NAIL WITH WASHER, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66652-008, UNIT 39, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 34, BLOCK 177:

5. NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 7.04 FEET TO A RAILROAD SPIKE, THENCE;
6. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 166.00 FEET TO A CORNER, THENCE;
7. SOUTH 48 DEGREES 12 MINUTES 49 SECONDS EAST, A DISTANCE OF 524.85 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, THENCE;
8. ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, SOUTH 80 DEGREES 56 MINUTES 00 SECONDS WEST, A DISTANCE OF 1,400.88 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 455,023 SQUARE FEET OR 10.446 ACRES



Exhibit "B"

to Declaration

Legal Description of

Vacant Property

BEGINNING AT A COMMON CORNER POINT BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP; APN #30-00-66636-006, UNIT 1, BLOCK 177, LANDS NOW OR FORMERLY BAEDERWOOD LIMITED PARTNERSHIP AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER, INC., SAID POINT BEING THE FOLLOWING SEVEN (7) COURSES AND DISTANCES FROM A POINT OF CURVATURE ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD (A.K.A. ROUTE 611, 100 FOOT WIDE RIGHT-OF-WAY, LEGALLY OPEN):

- A. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, CONNECTING THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF OLD YORK ROAD WITH THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAY, HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 82 DEGREES 54 MINUTES 43 SECONDS, AN ARC LENGTH OF 130.23 FEET, A CHORD BEARING OF SOUTH 11 DEGREES 40 MINUTES 22 SECONDS EAST, AND A CHORD DISTANCE OF 119.16 FEET TO A POINT OF TANGENCY, THENCE;

THE FOLLOWING THREE (3) COURSES AND DISTANCES ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE FAIRWAYS:

- B. SOUTH 53 DEGREES 07 MINUTES 43 SECONDS EAST, A DISTANCE OF 397.32 FEET TO A POINT OF CURVATURE, THENCE;
- C. ALONG THE ARC OF A CIRCLE CURVING TO THE LEFT, HAVING A RADIUS OF 290.00 FEET, A CENTRAL ANGLE OF 45 DEGREES 56 MINUTES 17 SECONDS, AN ARC LENGTH OF 232.51 FEET, A CHORD BEARING SOUTH 76 DEGREES 05 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 226.34 FEET TO A POINT OF TANGENCY, THENCE;
- D. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 608.82 FEET TO A POINT, THENCE;
- E. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 40, BLOCK 177, NORTH 09 DEGREES 04 MINUTES 00 SECONDS WEST, A DISTANCE OF 95.00 FEET TO A CONCRETE MONUMENT, THENCE;

THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66636-006, UNIT 1, BLOCK 177 AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, INC.:

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- F. NORTH 80 DEGREES 56 MINUTES 00 SECONDS EAST, A DISTANCE OF 13.83 FEET TO A RAILROAD SPIKE, THENCE;
- G. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 390.45 FEET TO THE TRUE POINT AND PLACE OF BEGINNING AND FROM SAID POINT OF BEGINNING RUNNING, THENCE;

THE FOLLOWING TWO (2) COURSES AND DISTANCES ALONG THE DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND UNIT 22, BLOCK 177, LANDS NOW OR FORMERLY NOBLE TOWN CENTER ASSOCIATES, L.P.:

1. NORTH 29 DEGREES 34 MINUTES 00 SECONDS EAST, A DISTANCE OF 44.92 FEET TO A POINT, THENCE;
2. NORTH 45 DEGREES 47 MINUTES 00 SECONDS WEST, A DISTANCE OF 785.56 FEET TO A POINT, THENCE;
3. ALONG THE COMMON DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND OPEN SPACE 'E', UNIT 78, BLOCK 177, UNIT 64, BLOCK 177; UNIT 63, BLOCK 177; UNIT 62, BLOCK 177; UNIT 61, BLOCK 177; UNIT 39, BLOCK 177; UNIT 38, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC.; NORTH 77 DEGREES 46 MINUTES 00 SECONDS EAST, A DISTANCE OF 520.60 FEET TO A CORNER, THENCE;
4. ALONG THE COMMON DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND UNIT 38, BLOCK 177; UNIT 37, BLOCK 177, UNIT 36, BLOCK 177, UNIT 35, BLOCK 177, UNIT 34, BLOCK 177, UNIT 33, BLOCK 177, UNIT 32, BLOCK 177, UNIT 31, BLOCK 177, OPEN SPACE 'B', LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., SOUTH 45 DEGREES 43 MINUTES 00 SECONDS EAST, A DISTANCE OF 792.82 FEET TO A CORNER, THENCE;
5. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND UNIT 34, BLOCK 177, LANDS NOW OR FORMERLY PHILADELPHIA PRESBYTERY HOMES, INC., SOUTH 09 DEGREES 04 MINUTES 00 SECONDS EAST, A DISTANCE OF 57.48 FEET TO A MAG NAIL WITH WASHER, THENCE;
6. ALONG THE DIVIDING LINE BETWEEN APN #30-00-66644-007, UNIT 33, BLOCK 177 AND APN #30-00-66636-006, UNIT 1, BLOCK 177, SOUTH 80 DEGREES 56 MINUTES 00 SECONDS WEST, A DISTANCE OF 551.45 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 366,895 SQUARE FEET OR 8.423 ACRES



Exhibit "C" to Declaration

Easement Plan





Montgomery County Recorder of Deeds

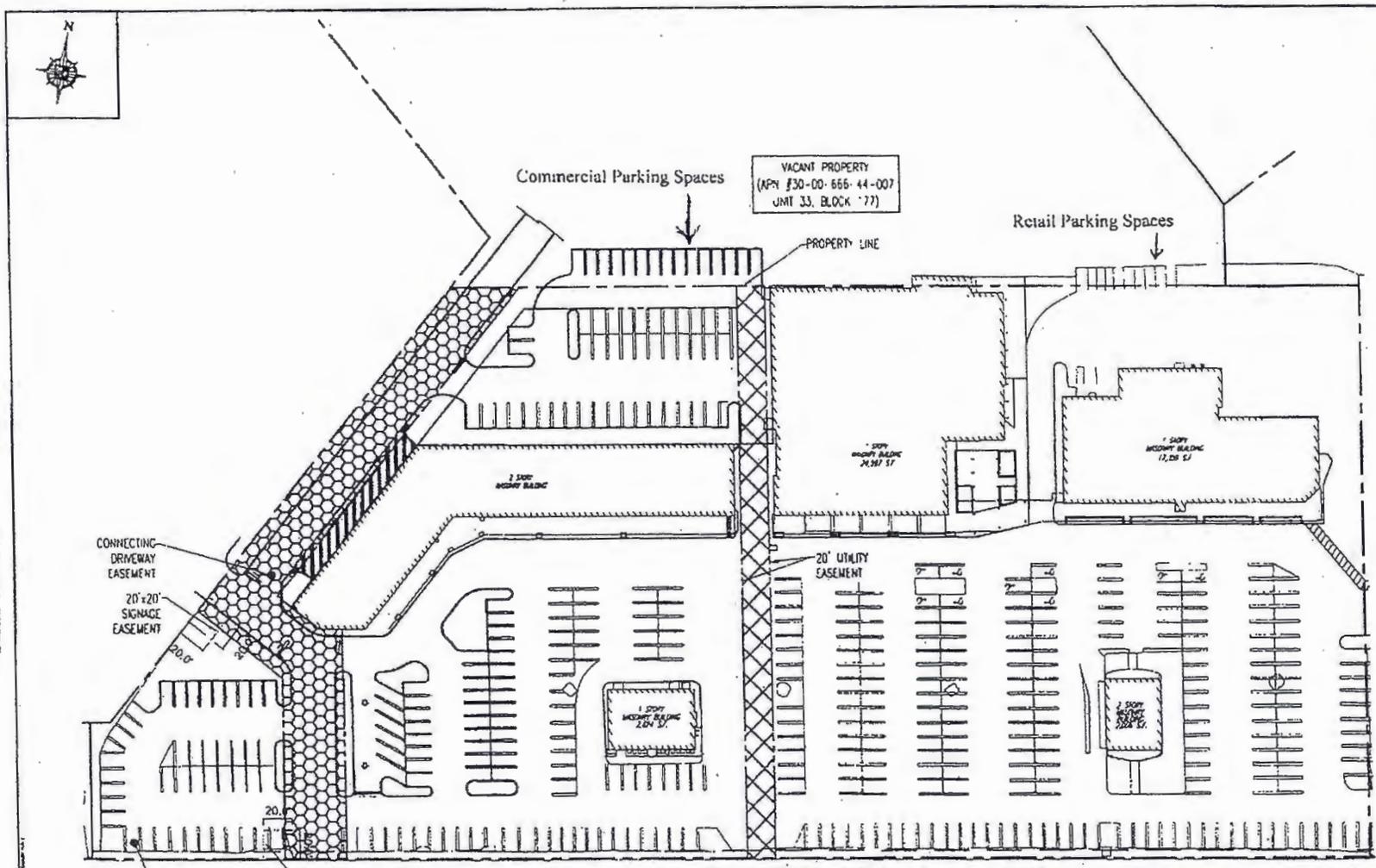
BOHLER ENGINEERING
 10000 WOODBURN ROAD, SUITE 100
 WOODBURN, MARYLAND 21786
 TEL: 301-261-1100 FAX: 301-261-1101
 WWW.BOHLENERG.COM

PLANNING BOARD
 1. ALL INFORMATION IS FOR INFORMATIONAL PURPOSES ONLY.
 2. THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION.
 3. THE PLANNING BOARD HAS REVIEWED THIS PLAN AND HAS NO OPINION AS TO THE ACCURACY OF THE INFORMATION PROVIDED.
 4. THE PLANNING BOARD IS NOT RESPONSIBLE FOR THE CONSTRUCTION OF THIS PLAN.
 5. THE PLANNING BOARD IS NOT RESPONSIBLE FOR THE CONSTRUCTION OF THIS PLAN.

BOHLER ENGINEERING
 10000 WOODBURN ROAD, SUITE 100
 WOODBURN, MARYLAND 21786
 TEL: 301-261-1100 FAX: 301-261-1101
 WWW.BOHLENERG.COM

A.S. BENOSKY
 10000 WOODBURN ROAD, SUITE 100
 WOODBURN, MARYLAND 21786
 TEL: 301-261-1100 FAX: 301-261-1101
 WWW.BOHLENERG.COM

EASEMENT PLAN
 1



THE FAIRWAY
 (A.K.A. THE FAIRWAY VALLEY ROAD)
 (PUBLIC ROOM)
 (BY REF 604)

LEGEND

UTILITY EASEMENT	
CONNECTING DRIVEWAY EASEMENT	
TEMPORARY CONSTRUCTION EASEMENT	

1" = 100'

100 50 25 0

Exhibit "D" to Declaration

Driveway Plan



Exhibit "E" to Declaration**Minimum Insurance Coverages**

Commercial General Liability insurance in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for any injury or death and not less than \$1,000,000 per occurrence for damage to the Shopping Center Property (including loss of use) and containing a cross liability provision

Commercial Automobile Liability insurance (including non-owned and hired liability) in the amount of not less than \$1,000,000 combined single limit,

Workers Compensation insurance with statutory limits for its activities on the Shopping Center Property and covering any accident arising in connection with the presence of the Owner of the Vacant Property, its contractors, agents and representatives on the Shopping Center Property

The Owner of the Vacant Property and its contractors, agents and representatives shall name the Owner of the Shopping Center Property and its management company as additional insureds with respect to the Commercial General Liability and Commercial Automobile Liability policies.

All policies provided by the Owner of the Vacant Property and its contractors, agents and representatives shall be primary and noncontributing with any other insurance available to the Owner of the Shopping Center Property.



EXHIBIT "B"

LAW OFFICES

BRESNAN & HERDER

311 LINDENWOLD AVENUE
AMBLER, PA 19002

(215) 646-4440
FAX (215) 641-9563

JUN 26 2013

R. REX HERDER, JR.
JOSEPH E. BRESNAN

June 11, 2013

Marc B. Kaplin, Esquire
Kaplin, Stewart & Associates
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, PA 19422-0765

Re: Baederwood Limited Partnership; Declaration of Easements

Dear Mr. Kaplin:

This will acknowledge receipt of the Declaration of Easements document you provided in connection with the anticipated sale of the 10.5 acre Shopping Center Property (as that term is defined in the Declaration) to an institutional shopping center owner. I understand that your client, Baederwood Limited Partnership will retain ownership of the undeveloped 8.4 acre parcel at the rear of the Shopping Center Property for future development as a multi-family complex or other use consistent with the applicable zoning regulations.

I further understand that the Declaration of Easements you provided is intended to satisfy the requirements of section 504.6.P of the Abington Township Zoning Ordinance. I have reviewed the Declaration of Easements and find that it satisfies the requirements of section 504.6.P of the Zoning Ordinance.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

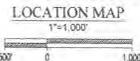
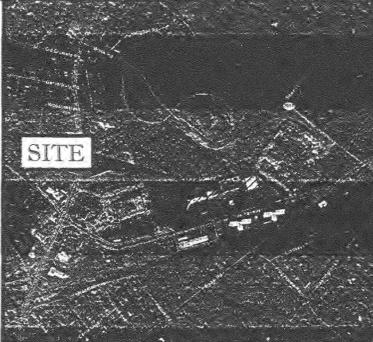
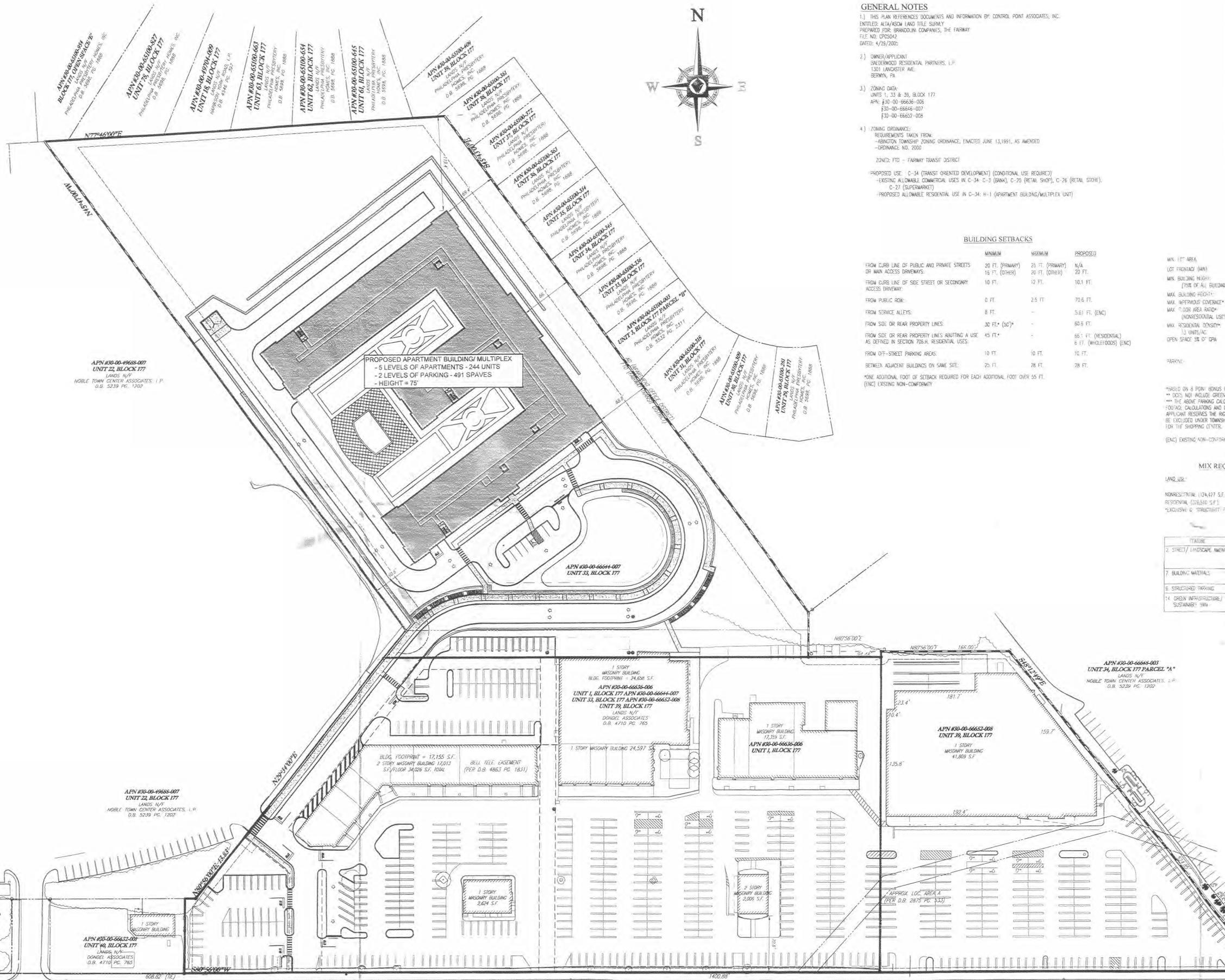


R. Rex Herder, Jr.

RRHjr/hms

cc: Larry Matteo, Director of Code Enforcement

EXHIBIT "C"



GENERAL NOTES

- THIS PLAN REFERENCE DOCUMENTS AND INFORMATION BY CONTROL POINT ASSOCIATES, INC. ENTITLED: ALTA/ASCM LAND TITLE SURVEY. PREPARED FOR: BAEDERWOOD PARTNERS, L.P. FILE NO. CR20242. DATE: 4/29/2024.
- OWNER/APPLICANT: BAEDERWOOD RESIDENTIAL PARTNERS, L.P. 1301 LANCASTER AVE. BERWYN, PA.
- ZONING DATA: UNITS 1, 33 & 35, BLOCK 177. APN: #30-00-49663-006. #30-00-66646-007. #30-00-66652-008.
- ZONING ORDINANCE: REQUIREMENTS TAKEN FROM: -ABINGTON TOWNSHIP ZONING ORDINANCE, ENACTED JUNE 13, 1991, AS AMENDED -ORDINANCE NO. 2000. ZONED: FTD - FAIRWAY TRANSIT DISTRICT. PROPOSED USE: C-34 (TRANSIT ORIENTED DEVELOPMENT) (CONDITIONAL USE REQUIRED). -EXISTING ALLOWABLE COMMERCIAL USES IN C-34: C-3 (BANK), C-26 (RETAIL STORE), C-27 (SUPERMARKET). -PROPOSED ALLOWABLE RESIDENTIAL USE IN C-34: H-1 (APARTMENT BUILDING/MULTIPLIX UNIT).

BUILDING SETBACKS

	MINIMUM	MAXIMUM	PROPOSED
FROM CURB LINE OF PUBLIC AND PRIVATE STREETS OR MAIN ACCESS DRIVEWAYS:	20 FT. (PRIMARY) 15 FT. (OTHER)	25 FT. (PRIMARY) 20 FT. (OTHER)	N/A 20 FT.
FROM CURB LINE OF SIDE STREET OR SECONDARY ACCESS DRIVEWAY:	10 FT.	12 FT.	10.1 FT.
FROM PUBLIC ROW:	0 FT.	2.5 FT.	70.6 FT.
FROM SERVICE ALLEYS:	8 FT.	-	5.61 FT. (ENC)
FROM SIDE OR REAR PROPERTY LINES:	30 FT. (50')	-	60.6 FT.
FROM SIDE OR REAR PROPERTY LINES ABUTTING A USE AS DEFINED IN SECTION 708.H. RESIDENTIAL USES:	45 FT.*	-	65.1 FT. (RESIDENTIAL) 6 FT. (WHOLEFOODS) (ENC)
FROM DT-STREET PARKING AREAS:	10 FT.	10 FT.	10 FT.
BETWEEN ADJACENT BUILDINGS ON SAME SITE:	25 FT.	78 FT.	78 FT.

*ONE ADDITIONAL FOOT OF SETBACK REQUIRED FOR EACH ADDITIONAL FOOT OVER 55 FT. (ENC) EXISTING NON-COMFORMITY

DIMENSIONAL REGULATIONS

	REQUIRED/ALLOWABLE	PROPOSED
MIN. LOT AREA:	1.0 AC.	15,866 AC.
LOT FRONTAGE (MIN):	100 FT.	1,401 FT.
MIN. BUILDING HEIGHT: (TOP OF ALL BUILDINGS):	20 FT.	<20' (ENC)
MAX. BUILDING HEIGHT:	75 FT.**	75 FT.
MAX. APPROXIMATE COVERAGE*:	60%**	14.85%**
MAX. COVERED AREA RATIO* (NONRESIDENTIAL USES):	0.25*	0.13
MAX. RESIDENTIAL DENSITY*:	745 UNITS/AC	244 UNITS
OPEN SPACE % OF GFA:	5% X 526,510 SF. = 26,325 SF.	22,000 SF.
PARKING:	RESIDENTIAL: 2 SPACES/2 UNITS = 71,244 = 488 SPACES	RESIDENTIAL: 491 SPACES
	50' ALL 1 SPACE/750 SF. = 77,447/250 = 488 SPACES	RETAIL: 568 SPACES

*BASED ON 8 POINT BONUS PROVISION
** DOES NOT INCLUDE GREEN AREAS WITHIN OPEN SPACE ON RESIDENTIAL STRUCTURE
*** THE ABOVE PARKING CALCULATIONS ARE A MAXIMUM CALCULATION OF THE REQUIRED PARKING BASED ON GROSS SQUARE FOOTAGE CALCULATIONS AND DO NOT CONSIDER EXCLUSIONS OF CERTAIN SPACE AS PERMITTED BY TOWNSHIP CODE. APPLICANT RESERVES THE RIGHT TO PROVIDE MORE SPECIFIC INFORMATION IN THE FUTURE REGARDING ASH AT PARCEL #101 BE EXCLUDED UNDER TOWNSHIP CODE WHICH MAY HAVE THE EFFECT OF REDUCING THE AMOUNT OF CODE REQUIRED PARKING FOR THE SHOPPING CENTER.
(ENC) EXISTING NON-COMFORMITY

MIX REQUIREMENTS

LAND USE	MIN./MAX. % OF FLOOR AREA (GROSS)**	ALLOWABLE	PROPOSED
NONRESIDENTIAL (124,177 SF.):	78-85%	78-85%	71.55%
RESIDENTIAL (526,510 SF.):	15-20%	15-20%	22.42%

**EXCLUSIVE OF STRUCTURED PARKING

BONUS PROVISIONS

FEATURE	BONUS POINTS	PROPOSED
2. STREET / LANDSCAPE AMENITIES:	1	- DATEBO - PUBLIC ART - SCULPTURE
7. BUILDING MATERIALS:	2	- DECORATIVE MASONRY ON GREATER THAN 50% OF BUILDING FACADE
6. STRUCTURED PARKING:	2	- 15% TO BE AVAILABLE TO PUBLIC (74 SPACES)
14. GREEN INFRASTRUCTURE / SUSTAINABLE SWM:	3	- RECYCLED RAIN WATER

BOHLER ENGINEERING

SITE CIVIL AND CONSULTING ENGINEERING
LANDSCAPE ARCHITECTURE / SUSTAINABLE DESIGN
TRANSPORTATION SERVICES / PERMITTING SERVICES

PHILADELPHIA
BALTIMORE, MD
SOUTHEASTERN PA
NORTHERN VA
CHARLOTTE, NC
FALCON, NC

NEW JERSEY - CORPORATE
NEW YORK - CORPORATE
PHILADELPHIA - CORPORATE
BALTIMORE, MD
SOUTHEASTERN PA
NORTHERN VA
CHARLOTTE, NC
FALCON, NC

REVISIONS

REV#	DATE	COMMENT	BY

CALL BEFORE YOU DIG!

PENNSYLVANIA LAW REQUIRES 3 WORKING DAYS NOTICE FOR CONSTRUCTION PHASE AND 10 WORKING DAYS IN DESIGN STAGE - STOP CALL

PAI
1-800-242-1776

NOT APPROVED FOR CONSTRUCTION

PROJECT NO.: PP150555
DRAWN BY: R.D.E.
CHECKED BY: A.S.B.
DATE: 01/25/2016
SCALE: 1" = 80'
CAD I.D.: PP150555 OVR/CON/USE-0

CONDITIONAL USE PLANS FOR REDSTONE AT BAEDERWOOD

THE FAIRWAY
ABINGTON TOWNSHIP
MONTGOMERY COUNTY, PA
FOR

BAEDERWOOD RESIDENTIAL PARTNERS, L.P.
1301 LANCASTER AVENUE
BERWYN, PA

BOHLER ENGINEERING

1600 MANOR DRIVE, SUITE 200
CHALFONT, PENNSYLVANIA 18914
Phone: (215) 916-9100
Fax: (215) 916-9102
www.BohlerEngineering.com

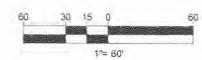
A.S. BENOSKY

REGISTERED LANDSCAPE ARCHITECT
PENNSYLVANIA LICENSE NO. 14001371E

SHEET TITLE
OVERALL SITE PLAN

SHEET NUMBER
2
OF 21

REVISION - 0



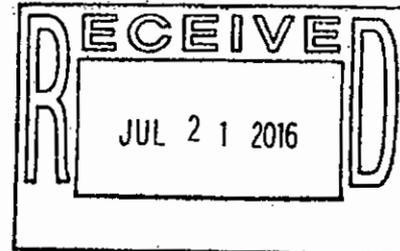
THE FAIRWAY



Wayne C. Luker, President
Steven N. Kline, Vice President
Michael LeFevre, Manager
Jay W. Blumenthal, Treasurer

1176 Old York Road Abington PA 19001-3713 Telephone: 267-536-1000

Marc B. Kaplin, Esquire
Kaplin Stewart Meloff Reiter & Stein, PC
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, Pa. 19422-0765



July 18, 2016

Re: **Conditional Use Application filed on behalf of Baederwood Residential Partners, L.P.**

Dear Mr. Kaplin,

This letter is sent to inform you that I have received the supplemental plans submitted of the elevations of the Baederwood Shopping Center Site and the proposed layouts of the parking structure. Those plans have been added to the plan set submitted with the Conditional Use Application filed for the residential development of the Baederwood Shopping Center Site.

I have reviewed the supplemental submissions and I must inform you that several issues remain unresolved and if not brought into compliance with the requirements of Ordinance #2000 of the Township of Abington will require relief from the Zoning Hearing Board. The items that still need to be addressed are as follows:

1. Ordinance #2000, Section 504.6.D requires the applicant to install crosswalks from building to building on the site and provide safe convenient sidewalks to all street connections and adjoining properties. As per the plans submitted, only one such access way has been provided for the entire site. This access way does not connect all the buildings on the site or any of the adjoining properties.
2. Ordinance #2000, Section 504.6.F requires bicycle racks at a rate of one rack to accommodate 10 bicycles for every 250 surface parking stalls, be added throughout the site. One bicycle rack has been plotted at the proposed new residential development, however no other racks appear to have been added throughout the site.
3. Ordinance #2000, Section 504.6.G requires all adjacent residential land uses as defined within Section 706.H of the Zoning Ordinance of the Township of Abington be screened in accordance with Section 504.8.G. Additional landscaping is



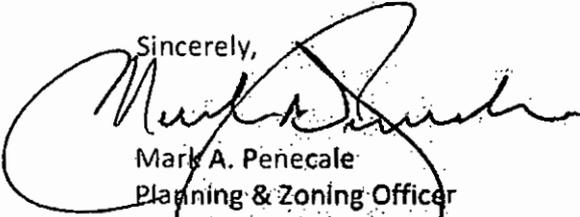
required to be added along The Fairway Frontage to screen Rydal East & Rydal West.

4. Ordinance #2000, Section 504.6.H limits the number of curb cuts to one per site. The existing site currently has four curb cuts on The Fairway. It is the opinion of this office that the number of curb cuts can be reduced to improve traffic flow. Once your escrow is submitted for the third party traffic review, a professional opinion can be issued.
5. Ordinance #2000, Section 504.6.K requires all new and existing loading and service areas to be screened from view of both all streets and adjacent properties. I was unable to locate any proposed landscaping that would bring the plan into compliance with this requirement.
6. Ordinance #2000, Section 504.8.B.2.d requires that at least 10% of all surface parking areas be landscaped with a design rate that will allow at least 20% of all paved surfaces to be shaded within five years.
7. Ordinance #2000, Section 504.C.1 & 2 requires streetscaping to include sidewalks of a design width to permit walking, bicycling and the like. The design must also include landscaping benches, trash cans, planter and bike racks at prescribed distances.
8. Ordinance #2000, Section 504.C.2.f requires sidewalks to be added along onsite access drives. The final number of curb cuts will determine the layout for the required sidewalks.
9. Ordinance #2000, Section 504.C2.g, h, l, j and k contain the design standards that must be adhered to.
10. Ordinance #2000, Section 504.8.D requires public open spaces. The plan is required to be revised to plot the location of these required public open spaces.
11. Ordinance #2000, Section 504.8.E requires the plan to adhere to lighting standards. In order to ensure that the development is in compliance with the requirements of the ordinance, a lighting plan is required to be submitted for review.

12. Once the plan has been revised to include the additional landscaping, hardscaping and other improvements required by Ordinance #2000, the revised plan will be reviewed to ensure compliance with Sections 504.8.F and Section 504.8.G.

If revised plans and/or studies are submitted, they will be reviewed by this office or other Township Staff and comments on those plans or studies will be sent under separate cover. If there are any questions that you may have, please feel free to contact me at 267-536-1017 or @mpenecale@abington.org.

Sincerely,



Mark A. Penecale
Planning & Zoning Officer
Township of Abington

Cc: Michael LeFevre; Abington Township Manager
Lawrence T. Matteo, Jr.; Director of Planning & Code Enforcement
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